

SETTLEMENT AGREEMENT

This Agreement is entered into this 4th day of October 2021 by and among Plaintiff the UNITED STATES OF AMERICA (“United States”), acting through the United States Attorney’s Office for the District of Rhode Island, on behalf of the United States Coast Guard (“USCG”), and Defendants PERRY PHILLIPS (“Phillips”) and BENJAMIN C. FOSTER (“Foster”), (collectively “the Parties”).

PREAMBLE

A. The United States contends that it has certain claims and causes of action against Phillips and Foster under 14 U.S.C. § 521(c)(2), (3) and/or 18 U.S.C. §§ 1038(b), (c)(2). These claims are set forth in the United States’ Complaint, filed in the matter of *United States v. Phillips and Foster*, 21-CV- 401, (the “Civil Action”) presently pending in the United States District Court for the District of Rhode Island.

B. Specifically, the United States contends that on or about June 6, 2020, while aboard a vessel off the coast of Block Island, Rhode Island, Defendants knowingly, purposefully, and/or intentionally discharged approximately three flares into the air using a flare gun (the conduct described in this paragraph and in paragraphs 13 through 20 of the United States’ Complaint in the Civil Action is henceforth referred to as the “Covered Conduct”).

C. Phillips and Foster admit that they engaged in the Covered Conduct, admit the facts alleged in paragraphs 13 through 20 of the United States’ Complaint in the Civil Action, and acknowledge that they are civilly liable therefor.

D. Phillips and Foster waive, and agree not to raise or interpose, any defense based on the Eighth Amendment to the United States Constitution on the theory of excessive fines in any civil

claim brought by the United States with respect to the Covered Conduct as alleged in the United States' Complaint in the Civil Action, or any action to enforce the terms of this agreement.

E. Phillips and Foster have represented that they lack the present financial means to pay a judgment in the amount demanded upon the face of the Complaint, and have provided sworn statements and documentation to that effect.

F. The United States and Phillips and Foster mutually desire to settle this dispute between them, without further delay and the uncertainty and expense of litigation.

Accordingly, in reliance upon the representations contained herein, and in consideration of the mutual promises, covenants and obligations in this Agreement, the resolution of the claims described above, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. Phillips and Foster waive service of the Complaint in the Civil Action, and accept and acknowledge the personal jurisdiction of the United States District Court for the District of Rhode Island over them with respect to the Civil Action and any action or proceeding to enforce the terms of this Agreement, and the propriety of venue in that Court with respect to the Civil Action.

2. Phillips and Foster agree to pay to the United States the sum of TEN THOUSAND DOLLARS (\$10,00.00) (the "Settlement Sum") (of which Five Thousand Dollars (\$5,000) will be paid by Defendant Phillips, and Five Thousand Dollars (\$5,000) will be paid by Defendant Foster), within thirty days of the effective date of this agreement. Payment shall be made by certified

check or money order, or electronic funds transfer, in accordance with instructions furnished in writing by the Office of the United States Attorney for the District of Rhode Island.

3. In consideration of Phillips and Foster's agreement to pay the Settlement Sum set forth in paragraph 2 above, and subject to the other terms of this Agreement, the United States agrees to dismiss the Civil Action with prejudice, and to release any civil and administrative monetary claims against Phillips and Foster based on the Covered Conduct defined in Paragraph B above and the facts set forth in paragraphs 13 through 24 of the Complaint filed by the United States in the Civil Action. The release provided by this paragraph, and the dismissal of the Civil Action with prejudice shall become final and effective only upon Phillips and Foster's payment of the Settlement Sum in full.

4. Notwithstanding the release given in paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any criminal liability under state or Federal law;
- b. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- c. Any liability based upon obligations created by this Agreement.

5. Each of the signatories to this Agreement represents that he has the full power and authority to enter into this Agreement. Phillips and Foster each represent that he has had the opportunity to review this Agreement, including the opportunity to seek the advice of counsel, and that his entry into this Agreement is knowing and voluntary.

6. The Parties agree that this writing and its annexed exhibits contains the entire agreement between them relating to the subject matter of this Agreement; that it supersedes any

prior understandings, if any, whether written or oral, relating to the subject matter of this Agreement; and that this Agreement may be modified, supplemented or terminated only in a writing, signed by all Parties, and specifically referencing this Agreement.

7. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Rhode Island. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

8. In the event that any provision of this Settlement Agreement shall be deemed void or unenforceable, such declaration shall not impair the validity or binding nature of the remainder of the agreement, which shall continue in full force and effect.

9. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement).

10. This Agreement may be executed in one or more counterparts, and each of them shall be of the same force and effect at law as an original. Facsimile or PDF signatures shall be deemed equivalent to, and given the same force and effect as originals.

11. This Agreement is binding on Phillips and Foster and their heirs and assigns.

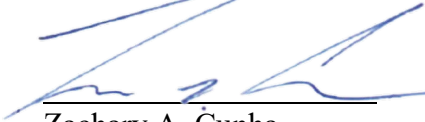
12. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

In witness hereof, the parties, through their duly authorized representatives, hereunder set their hands:

On behalf of the United States:

RICHARD B. MYRUS
Acting United States Attorney
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

Oct. 4, 2021
DATE

By: 
Zachary A. Cunha
Assistant U.S. Attorney
(401) 709-5000

On behalf of Defendant Phillips

DATE

By: _____
Perry Phillips

By: _____
John J. Calcagni, III Esq.
72 Clifford Street, Suite 300
Providence, RI 02903
Counsel for Defendant Phillips

On behalf of Defendant Foster

DATE

By: _____
Benjamin C. Foster

By: _____
George J. West, Esq.
George J. West & Associates
One Turks Head Place, Suite 312
Providence, RI 02903
Counsel for Defendant Foster

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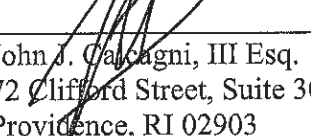
By: _____
Zachary A. Cunha
Assistant U.S. Attorney
(401) 709-5000

On behalf of Defendant Phillips

9/29/21

DATE

By: 
Perry Phillips

By: 
John J. Caccagnini, III Esq.
72 Clifford Street, Suite 300
Providence, RI 02903
Counsel for Defendant Phillips

On behalf of Defendant Foster

DATE

By: _____
Benjamin C. Foster

By: _____
George J. West, Esq.
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Providence, RI 02903

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By: _____
Zachary A. Cunha
Assistant U.S. Attorney
(401) 709-5000

On behalf of Defendant Phillips

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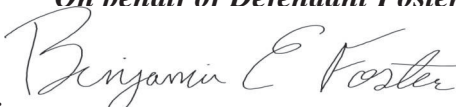
By: _____
Perry Phillips

By: _____
John J. Calcagni, III Esq.
72 Clifford Street, Suite 300
Providence, RI 02903
Counsel for Defendant Phillips


On behalf of Defendant Foster

09/28/2021

DATE

By: 

Benjamin C. Foster

By: 

George J. West, Esq.
George J. West & Associates
One Turks Head Place, Suite 312
Providence, RI 02903
Counsel for Defendant Foster