

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of United States Department of Homeland Security, Customs and Border Protection (collectively the “United States”), Eos Energy Storage, LLC (“Eos”), and Vincent Icolari (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Eos Energy Storage, LLC (“Eos”), headquartered in Edison, New Jersey designs and sells industrial batteries to power companies and other commercial enterprises.

B. On December 30, 2019, Vincent Icolari (“Relator”) filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Icolari v. Eos Energy Storage, LLC*, Civil Action No. 19-22129 (MCA) (LDW), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). Relator alleged that Eos violated the False Claims Act by failing to declare the value of certain components of its batteries that Eos purchased in the United States and elsewhere (hereinafter, “the Components”) and which Eos provided to a company based in the People’s Republic of China (“PRC”) who assembled the various components into a finished product to be imported into the United States. Relator further alleged that by failing to declare the value of the

Components, Relator also failed to pay customs duties that should have been paid to the United States.

C. The United States contends that it has certain civil claims against Eos arising from the facts and conduct described in this paragraph, for which Eos admits, acknowledges, and accepts responsibility:

- (i) Between July 8, 2018 and June 7, 2019, Eos was the importer of record on 61 entries of merchandise into the United States.
- (ii) The merchandise Eos imported consisted of “dry” batteries assembled in the PRC and, once they arrived in the United States, Eos would add a proprietary fluid and take certain other steps that would render the batteries operational.
- (iii) As the importer of record, Eos is responsible for declaring the true and correct value the merchandise it imported into the United States.
- (iv) Eos failed to declare the true and correct value of the merchandise for which it was the importer of record. Specifically, Eos failed to declare the value of the Components that it purchased and provided to a company located in the PRC responsible to assembling the “dry” batteries. The Components that Eos purchased and

provided to the foreign manufacturer to be included in the assembly of the finished product constitute “assists,” the value of which must be declared to Customs upon entry into the United States. *See* 19 U.S.C. § 1401a(h)(1)(A)(i); see also 19 C.F.R. § 152.102(a). In addition, Eos failed to declare certain transportation and packing costs it incurred in connection with the importation of the “dry” batteries from the PRC. *See* 19 C.F.R. § 152.103(a), (b) & (d)(1).

That conduct described above is referred to as the “Covered Conduct.”

C. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Eos shall pay to the United States one million, seventeen thousand, seven hundred and sixty-one dollars (\$1,017,761) (the “Settlement Amount”), and interest on the Settlement Amount at a rate of 2% per annum from June 10, 2022, of which \$814,209 is restitution, by electronic funds

transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey, to be paid in the following manner: (i) one-third shall be paid within ten (10) days after the Effective Date of this Agreement, (ii) one-third shall be paid within thirty (30) days after the Effective Date of this Agreement, and (iii) one-third shall be paid within sixty (60) days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay Relator two hundred three thousand, five hundred and fifty-two dollars (\$203,552) by electronic funds transfer (Relator's Share). Payment shall be made to an attorney trust account designated by Relator's counsel.

3. Within 10 days of the Effective Date, Eos shall pay to Relator seventy thousand dollars (\$70,000) for expenses and attorneys' fees and costs pursuant to 31 U.S.C. § 3730(h). Payment shall be made to an attorney trust account designated by Relator's counsel.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interested due under Paragraph 1, the United States releases Eos, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program

Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Eos from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Eos, and its officers, agents, and employees, from any claim (including attorneys' fees, costs, and expenses of every kind and however denominated), including without limitation, any claim for liability to Relator, including any claim Relator has asserted, could have asserted, or may assert in the future, arising from the filing of the Civil Action, or related to the Covered Conduct under any applicable law, statute or regulation, including without limitation 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs. The release set forth in this Paragraph 8 shall

become effective upon payment by Eos of the amounts set forth in Paragraph 1 and 3.

9. Eos waives and shall not assert any defenses Eos may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Eos fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Eos has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. Eos fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Eos has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

12. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Eos, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Eos's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Eos makes to the United States pursuant to this Agreement and any payments that Eos may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Eos, and Eos shall

not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Eos shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Eos or any of its subsidiaries or affiliates from the United States. Eos agrees that the United States, at a minimum, shall be entitled to recoup from Eos any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Eos's books and records and to disagree with any calculations submitted by Eos or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Eos, or the effect of any such Unallowable Costs on the amount of such payments.

14. This Agreement is intended to be for the benefit of the Parties only.

15. Upon receipt of the payment described in Paragraph 1 and 3, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule

41(a)(1). The Parties agree that the Court retains jurisdiction to enforce the terms of this Settlement Agreement.

16. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

18. 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 New Jersey. 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.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

22. This Agreement is binding on Eos's successors, transferees, heirs, and assigns.

23. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

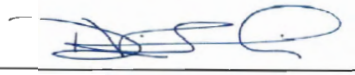
24. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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THE UNITED STATES OF AMERICA

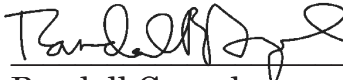
Dated: July 7, 2022

BY:  _____

David V. Simunovich
Assistant United States Attorney
United States Attorney's Office
District of New Jersey

EOS ENERGY STORAGE, LLC

Dated: July 6, 2022

BY: 
Randall Gonzales
Chief Financial Officer
Eos Energy Storage, LLC

Dated: July 6, 2022

Jason Gottlieb
Jason P. Gottlieb, Esq.
Alvin C. Lin, Esq.
Morrison Cohen LLP
909 Third Avenue, 27th Floor
New York, NY 10022
Counsel for Eos Energy Storage, LLC

RELATOR VINCENT ICOLARI

Dated: _____

6/29/12



Vincent Icolari
Relator

Dated: _____

Jonathan K. Tyko, Esq.
Tycko & Zavareei LLP
1828 L Street, NW, Suite 1000
Washington, D.C. 20036

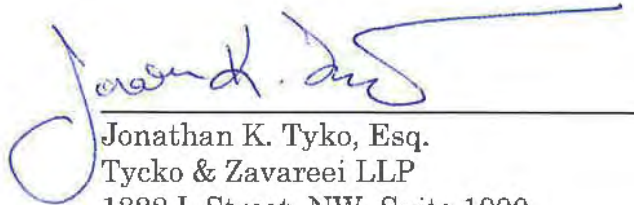
Paul Vandevent, Esq.
Vandevent Trade Law PLC
401 Tannahill Street
Dearborn, MI 48124
Counsel for Relator

RELATOR VINCENT ICOLARI

Dated: _____

Vincent Icolari
Relator

Dated: 7/6/2022



Jonathan K. Tyko, Esq.
Tycko & Zavareei LLP
1828 L Street, NW, Suite 1000
Washington, D.C. 20036

Paul Vandever, Esq.
Vandever Trade Law PLC
401 Tannahill Street
Dearborn, MI 48124
Counsel for Relator