

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice, Civil Division, and the United States Attorney’s Office for the Northern District of Iowa, and on behalf of the United States Department of Defense, United States Navy, and United States Army (collectively the "United States"); WDC Acquisitions, LLC d/b/a Wellman Dynamics (“WDC”); and Bradley Keller (“Relator”), (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. WDC is a limited liability company headquartered in Creston, Iowa, that specializes in the manufacture and sale of large scale, complex magnesium and aluminum castings for military aeronautical applications.

B. On October 9, 2020, Relator filed a *qui tam* action in the United States District Court for the Northern District of Iowa captioned *United States ex rel. Bradley Keller v. WDC Acquisitions, LLC d/b/a Wellman Dynamics and Trive Capital Management LLC*, Case No. 20-cv-100-LTS-MAR, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). In his complaint and related to the castings that WDC produces for the United States, Relator alleged that WDC failed to appropriately conduct or record necessary tensile strength tests, that WDC falsified or failed to conduct necessary destructive testing, that WDC failed to conduct necessary salt fog corrosion testing, and that WDC failed to conduct necessary hot isostatic testing. In addition, in Count II of the complaint, the Relator alleged a retaliation claim against WDC pursuant to 31 U.S.C. § 3730(h).

C. The United States contends that it has certain civil claims against WDC arising from the following conduct: (1) from January 1, 2014, to August 1, 2021, Wellman Dynamics Corporation (“Wellman”) (and then, beginning in May 2018, WDC) failed to appropriately report tensile test failures or perform necessary re-testing to ensure castings were adequate for sale; (2) from January 1, 2014, to August 1, 2021, Wellman (and then, beginning in May 2018, WDC) falsified casting properties for purposes of tensile testing, such that resulting test failures were falsely recorded as meeting customer specifications; (3) from January 1, 2014, to August 1, 2021, Wellman (and then, beginning in May 2018, WDC) falsified results for destructive testing of castings or would fail to conduct necessary destructive testing entirely; (4) from January 1, 2014, to August 1, 2021 Wellman (and then, beginning in May 2018, WDC) failed to conduct salt fog corrosion testing as required, and instead recycled previously-received certificates of passing; and (5) from January 1, 2014, to August 1, 2021, Wellman (and then, beginning in May 2018, WDC) failed to conduct necessary intergranular attack verification of hot isostatic test parts. These failures to conduct necessary testing or appropriately report test results caused the submission of false claims to the United States Department of Defense, United States Navy, and/or United States Army. That conduct is referred to below as the “Covered Conduct.”

D. WDC denies the United States’ allegations in Paragraph C and the Relator’s allegations in the Civil Action.

E. This Settlement Agreement is neither an admission of liability by WDC nor a concession by the United States that its claims are not well founded.

F. 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 under 31 U.S.C. §§ 3730(d) and (h).

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. WDC shall pay to the United States five-hundred thousand dollars (\$500,000.00) ("Settlement Amount"), which constitutes restitution to the United States, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than 10 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from WDC and as soon as feasible after receipt, the United States shall pay ninety-thousand dollars \$90,000.00 to Relator by electronic funds transfer ("Relator's Share").

3. WDC shall pay \$63,318 in attorney's fees to the Relator's attorney pursuant to 31 U.S.C. §§ 3730(d) and (h) no later than 10 days after the effective date of this Agreement, pursuant to wiring instructions to be provided by Relator's counsel. In addition, WDC shall pay \$15,000 to the Relator to settle his retaliation claim under 31 U.S.C. § 3730(h) no later than 10 days after the effective date of this Agreement, pursuant to wiring instructions to be provided by Relator's counsel.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims), Paragraph 9 (concerning disclosure of assets), and Paragraph 15 (concerning bankruptcy)

below, and upon the United States' receipt of the Settlement Amount, the United States releases WDC 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 (concerning reserved claims), Paragraph 9 (concerning disclosure of assets), and Paragraph 15 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases WDC 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 this 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;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

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/her 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 WDC, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs, or under 31 U.S.C. § 3730(h) for a retaliation claim.

9. WDC has provided sworn financial disclosures and supporting documents ("Financial Disclosures") to the United States and the United States has relied on the

accuracy and completeness of those Financial Disclosures in reaching this Agreement. WDC warrants that the Financial Disclosures are complete, accurate, and current as of the Effective Date of this Agreement. If the United States learns of asset(s) in which WDC had an interest of any kind as of the Effective Date of this Agreement (including, but not limited to, promises by insurers or other third parties to satisfy WDC's obligations under this Agreement) that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by WDC on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth set forth in the Financial Disclosures by \$25,000 or more, the United States may at its option: (a) rescind this Agreement and reinstate its suit or file suit based on the Covered Conduct or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of WDC's previously undisclosed assets. WDC agrees not to contest any collection action undertaken by the United States pursuant to this provision and agrees that it will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States, pursuant to this paragraph rescinds this Agreement, WDC waives and agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to WDC that this Agreement has been rescinded, and

(b) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement.

10. WDC waives and shall not assert any defenses WDC 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.

11. WDC 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 WDC 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.

12. WDC fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that WDC 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.

13. 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 WDC, 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 investigation(s) of the matters covered by this Agreement;
- (3) WDC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil 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 WDC makes to the United States pursuant to this Agreement and any payments that WDC 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 WDC, and WDC 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, WDC shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by WDC or any of its subsidiaries or affiliates from the United States. WDC agrees that the United States, at a minimum, shall be entitled to recoup from WDC 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 WDC's books and records and to disagree with any calculations submitted by WDC or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by WDC, or the effect of any such Unallowable Costs on the amount of such payments.

14. WDC agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, WDC shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. WDC further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

15. In exchange for valuable consideration provided in this Agreement, WDC and Relator acknowledge the following:

a. WDC has reviewed its financial situation and warrants that, after giving effect to WDC's sale and at the time WDC pays the Settlement Amount, WDC will be solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to WDC, within the meaning of 11

U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which WDC was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If WDC's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, WDC or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of WDC's debts, or to adjudicate WDC as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for WDC or for all or any substantial part of WDC's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against WDC for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against WDC in the amount of \$29,010,000.00, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such

payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 2 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

f. WDC agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 15(e) is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. WDC shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). WDC waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to WDC that the releases have been rescinded

pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

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

17. Upon receipt of the payment described in Paragraph 1, 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).

18. Except as provided in Paragraph 3, above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

20. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Iowa. 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.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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

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

24. This Agreement is binding on WDC's successors, transferees, heirs, and assigns.

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

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

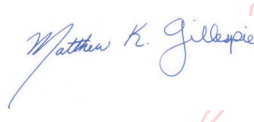
27. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/25/22 BY: ALICIA BENTLEY
Alicia Bentley
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

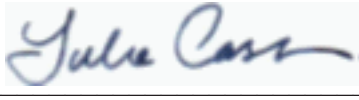
Digitally signed by ALICIA BENTLEY
Date: 2022.07.25 14:44:07 -04:00'


TIMOTHY T. DUAX
Acting United States Attorney

 Digitally signed by
MATTHEW GILLESPIE
Date: 2022.07.25
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DATED: _____ BY: _____
Matthew K. Gillespie
Assistant United States Attorney
United States Attorney's Office
Northern District of Iowa

WDC ACQUISITIONS, LLC - DEFENDANT

DATED: July 25, 2022 BY: 

DATED: July 25, 2022 BY: 
Luke Cass
Rhett Dehart
Counsel for WDC

BRADLEY KELLER - RELATOR

DATED: _____ BY: _____
Bradley Keller

DATED: _____ BY: _____
Julie Bracker
Counsel for Bradley Keller

DATED: _____ BY: _____
Matthew K. Gillespie
Assistant United States Attorney
United States Attorney's Office
Northern District of Iowa

WDC ACQUISITIONS, LLC - DEFENDANT

DATED: _____ BY: _____

DATED: _____ BY: _____
Luke Cass
Rhett Dehart
Counsel for WDC

BRADLEY KELLER - RELATOR

DATED: 07-25-2022 BY: _____
Bradley Keller

DATED: 7/25/22 BY: _____
Julie Bracker
Counsel for Bradley Keller