

MARY JO WHITE  
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Southern District of New York  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA ex rel. ROBERT :  
S. KIRBY, AMERSIG GRAPHICS, INC., and :  
QUEBECOR PRINTING (USA) CORP., :

Plaintiff, :

-v- :

APPLIED PRINTING TECHNOLOGIES, L.P., formerly :  
known as APPLIED GRAPHICS TECHNOLOGIES, L.P., :  
a successor in interest to KORDET CREATIVE :  
SERVICES, DAVID FRIEDBERG, and HERBERT :  
SILVERMAN, :

Defendants. :

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STIPULATION AND  
ORDER OF SETTLEMENT  
AND DISMISSAL

97 Civ. 8382 (JSR)

WHEREAS, Robert S. Kirby, Amersig Graphics, Inc., and Quebecor Printing (USA) Corp. (the "Relators") filed a civil action against Applied Graphics Technologies, L.P. ("AGT"), David Friedberg ("Friedberg"), and Herbert Silverman ("Silverman"), as relators under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the "False Claims Act"), alleging, inter alia, that, between 1991 and 1994, AGT, Silverman, and Friedberg engaged in a fraudulent scheme whereby AGT's subcontractor, AmerSig Graphics, Inc. ("AmerSig"), made improper payments to Silverman and Friedberg in connection with AGT's printing contract with the Naval Exchange Service Command ("NEXCOM"), without disclosing those payments to

NEXCOM;

WHEREAS, the United States, by its attorney Mary Jo White, United States Attorney for the Southern District of New York, filed a notice of intervention pursuant to 31 U.S.C. § 3730(b)(4), on April 6, 1998;

WHEREAS, the United States, by its attorney Mary Jo White, United States Attorney for the Southern District of New York, filed an amended complaint against Applied Printing Technologies, L.P., formerly known as Applied Graphics Technologies, L.P., a successor in interest to Kordet Creative Services (“Applied Printing”), Friedberg, and Silverman (collectively, the “Defendants”), on April 20, 1998, asserting claims concerning the alleged kickback scheme set forth in the original complaint under the False Claims Act, as well as under the Anti-Kickback Act of 1986, 41 U.S.C. § 51, and the common law, for the years 1991 through 1994 (the “Amended Complaint”);

WHEREAS, the Defendants were each served with a summons and a copy of the Amended Complaint on April 28, 1998;

WHEREAS, Defendants have appeared and consented to the entry of this Stipulation and Order of Settlement and Dismissal (“Stipulation and Order”);

WHEREAS, this Stipulation and Order, and any action taken pursuant hereto, is not intended, and shall not be construed or asserted to be an admission of any liability or of the validity of any claim or allegation made in the action; and

WHEREAS, to avoid the delay, expense, uncertainty and inconvenience of protracted litigation, the United States, the Relators, and the Defendants desire to reach a full and final compromise and resolution of this action;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises, obligations, undertakings and commitments hereinafter set forth, do hereby covenant and agree as follows:

1. The parties hereto consent to this Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.

2. Defendants agree to pay the United States, in full compromise and satisfaction of this action, the sum of two hundred thirty seven thousand, one hundred forty-five dollars and eighty-six cents (\$237,145.86) (the "Settlement Amount"). This Settlement Amount shall constitute a debt due and owing ten days after this Stipulation and Order is entered by the Court and is to be discharged by payment to the United States under the following terms and conditions:

(a) Defendants shall pay to the United States the entire Settlement Amount no later than ten days after this Stipulation and Order is entered by the Court.

(b) The Settlement Amount shall be electronically transferred pursuant to instructions to be provided to counsel for the Defendants by the United States Attorney's Office for the Southern District of New York.

(c) Nothing in this Stipulation shall preclude Defendants from prepaying any and all of the Settlement Amount due under this Stipulation.

3. If Defendants fail to comply with the payment obligations set forth in paragraph 2, Defendants also shall pay interest in an amount calculated pursuant to 28 U.S.C. § 1961 on any balance of the Settlement Amount that remains unpaid, such interest to begin accruing eleven days after the entry of this Stipulation until full payment of the Settlement

Amount is made to the United States. Any such interest that becomes due pursuant to the terms of this Stipulation shall be deemed to be part of the Settlement Amount as defined and used herein. The United States may exercise all statutory, common law or equitable rights to collect such outstanding balance of the Settlement Amount, including offsetting funds owed to the Defendants by the United States. The United States shall be entitled to an award of reasonable costs and attorney's fees in connection with its collection efforts pursuant to this paragraph 3

4. The Relators agree that the settlement of this action, including all allegations in the original complaint filed by the Relators against the Defendants, is fair, adequate and reasonable under all the circumstances pursuant to 31 U.S.C. § 3730(c)(2)(B). The Relators, on their own behalf and on behalf of their descendents, dependents, heirs, executors, administrators, agents, successors, assigns, representatives and any party acting for or on behalf of or claiming under Relators, hereby release and discharge Defendants, including Defendant Applied Printing's current and former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, agents, and representatives, from any and all claims, causes or rights of action, demands, liabilities or penalties of any kind or nature whatsoever (collectively "Claims"), in law or in equity, that the Relators had, have or may have, either in an individual, qui tam or representative capacity, including without limitation any and all Claims arising out of, in connection with, or relating in any way to (a) the allegations contained in the original complaint, (b) the allegations contained in the Amended Complaint, and/or (c) this Stipulation and Order, including Relators' right to reimbursement from Defendants of reasonable expenses, attorney's fees and costs pursuant to 31 U.S.C. § 3730(d)(1)

5. The United States agrees to pay the Relators pursuant to 31 U.S.C. §

3730(d)(1), thirty thousand, eight hundred twenty-eight dollars and ninety-six cents (\$30,828.96) within a reasonable time following receipt of the full Settlement Amount from Defendants as described in paragraph 2. The Relators, on their own behalf and on behalf of their descendents, dependents, heirs, executors, administrators, agents, successors, assigns, representatives and any party acting for or on behalf of or claiming under Relators, hereby release and discharge the United States and all departments, agencies including without limitation NEXCOM and the Department of the Navy, subdivisions, agents, officers, employees or representatives of the United States from all claims, causes or rights of action, demands or liabilities of any kind or nature whatsoever (collectively "Claims") that Relators had, have or may have, arising out of, in connection with, or relating in any way to (a) the allegations contained in the original complaint, (b) the allegations contained in the Amended Complaint, and/or (c) this Stipulation and Order, including without limitation Claims for a share of the proceeds, fees, expenses and costs pursuant to 31 U.S.C. § 3730(d)(1). This Stipulation does not in any manner affect any Claims the United States has or may have against the Relators arising under Title 26 of the United States Code (the "Internal Revenue Code") and the regulations promulgated thereunder, or from any obligations created by this Stipulation and Order.

6. Subject to paragraphs 7 and 8 below, effective upon the receipt of the Settlement Amount described in paragraph 2 above, the United States, on behalf of itself, its officers, employees, agents, representatives, subdivisions, agencies and departments, hereby releases and discharges Defendants, including Defendant Applied Printing's current and former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, agents and representatives from any and all civil monetary claims under the False Claims Act, 31

U.S.C. §§ 3729-3731, the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51 et seq., and for related statutory and common law remedies, arising out of (a) the allegations contained in the original complaint, and/or (b) the allegations contained in the Amended Complaint.

7. The United States does not release or discharge Defendants, including Defendant Applied Printing's current and former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, agents and representatives, from (a) any claims arising under the Internal Revenue Code, Title 26 of the United States Code, and the regulations promulgated thereunder; (b) any obligations created by this Stipulation and Order; and (c) any liability for the delivery or installation of any deficient or defective products, or under any express or implied product liability.

8. This agreement does not release Defendants from suspension or debarment by any federal agency or make any representations regarding suspension or debarment.

9. Defendants agree that all costs, including those defined in the Federal Acquisition Regulations ("FAR") 48 C.F.R. § 31.205-47 incurred by or on behalf of the Defendants, including Defendant Applied Printing's current or former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, representatives, agents, and employees, in connection with (a) the matters covered by this Stipulation and Order, (b) the Government's audit and investigation of the matters covered by this Stipulation and Order, (c) the Defendants' investigation and defense of the allegations contained in the original complaint and/or Amended Complaint; (d) the negotiation and performance of this Stipulation and Order; and (e) the payments made to the United States pursuant to this Stipulation and Order, shall be unallowable costs for federal contract accounting and reimbursement purposes, including, but not

limited to, the cost principles applicable to federal grants, contracts, and cooperative agreements. These costs shall be separately accounted for by Defendants and will not be charged to any federal Government contract or program.

10. The Relators represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any other person or entity, in whole or in part, voluntarily, involuntarily, or by operation of law, (a) any right, claim or interest arising out of, in connection with or relating in any way to the subject matter of the original complaint, the Amended Complaint, or the settlement of this action, including any claim covered by paragraphs 4 and 5 above, or (b) any other right, claim or interest Relators had, have or may have against Defendants, including Defendant Applied Printing's current and former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, agents and representatives, and the United States and all departments, agencies including without limitation NEXCOM and the Department of the Navy, subdivisions, officers, employees, agents or representatives of the United States

11. The Defendants, the United States, and the Relators acknowledge, understand and agree that this Stipulation and Order sets forth the entire agreement and understanding between the parties and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof.

12. Each party hereto acknowledges and represents, on behalf of itself only, that such party does not rely and has not relied upon any representations or statements other than those contained herein, by any other party or any of such other party's agents, officers, employees, representatives or attorneys with regard to the subject matter, basis or effect of this

Stipulation and Order.

13. This Stipulation and Order may not be supplemented, modified, cancelled, or waived or otherwise altered in any way, in whole or in part, except in writing, signed by the United States, the Defendants and, if applicable, the Relators.

14. Any communication required under this Stipulation must be in writing and must be sent as follows:

To Defendant Applied Printing:

Kenneth Caruso, Esq.  
Shaw Pittman Potts & Trowbridge  
1675 Broadway  
New York, New York 10019-5820

To Defendant David Friedberg:

Patrick H. Barth, Esq.  
299 Broadway - Suite 1500  
New York, New York 10007

To Defendant Herbert Silverman:

Joshua L. Dratel, Esq.  
14 Wall Street, 28th Floor  
New York, New York 10005

To the United States:

Kathy S. Marks, Esq.  
Assistant United States Attorney  
United States Attorney's Office  
Southern District of New York  
100 Church Street, 19th Floor  
New York, New York 10007

To the Relator

Joseph P. Covington, Esq.  
Jenner & Block  
601 13th Street, N.W., Suite 1200  
Washington, D.C. 20005

15. This Stipulation shall be binding upon and inure to the benefit of (a) Defendant Applied Printing and its current and former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, agents, and representatives, and each of their respective legal representatives, successors, transferees and assigns; (b) Defendants

Friedberg and Silverman, and each of their respective descendants, dependents, heirs, executors, administrators, agents, representatives, successors, assigns; and (c) the Relators and each of their respective current and former parents, divisions, subdivisions, subsidiaries, affiliates, trustees, directors, officers, employees, descendants, heirs, executors, administrators, agents, representatives, successors, assigns, and any party acting for or on behalf of or claiming under Relators.

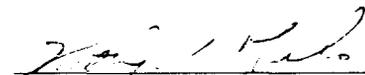
16. This action is hereby dismissed with prejudice, with each party to bear its own costs and attorney's fees.

17. This Court shall retain jurisdiction over all matters concerning this Stipulation and Order. Should any judicial action be required to enforce or interpret this Stipulation and Order or to resolve any dispute hereunder, the parties acknowledge that jurisdiction and venue for any such action shall lie exclusively in the United States District Court for the Southern District of New York, and the parties hereby consent to the jurisdiction of such Court and service of process in connection with any such action.

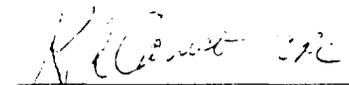
18. The parties to this Stipulation and Order agree that it may be signed in counter parts if necessary.

Dated: New York, New York  
~~August~~ 10, 1998  
~~September~~

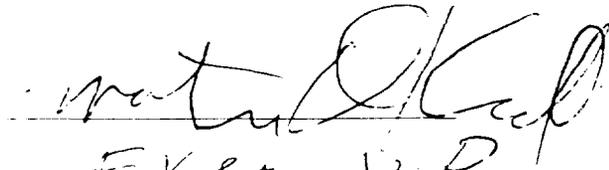
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SHAW, PITTMAN, POTTS & TROWBRIDGE  
Attorneys for Defendant Applied Printing

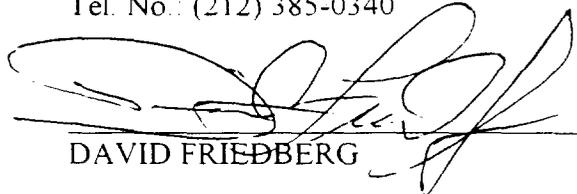
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APPLIED PRINTING TECHNOLOGIES, L.P.

By:   
Title: Exec. V.P.

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Attorney for Defendant David Friedberg

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Attorneys for Relators

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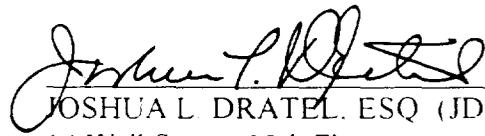
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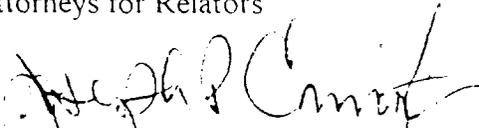
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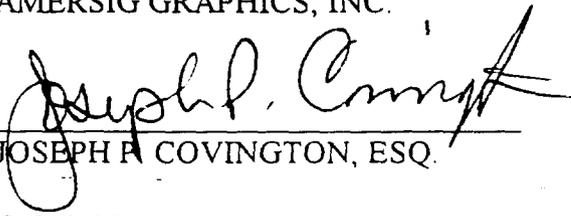
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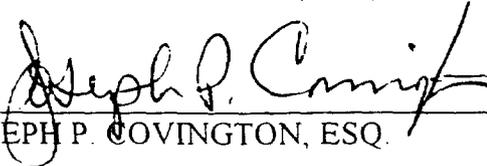
  
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\_\_\_\_\_  
ROBERT S. KIRBY

AMERSIG GRAPHICS, INC.

By:   
JOSEPH P. COVINGTON, ESQ.

QUEBECOR PRINTING (USA) CORP.

By:   
JOSEPH P. COVINGTON, ESQ.

SO ORDERED:

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE