

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 the United States Department of Defense, Defense Logistics Agency, and the United States Department of Agriculture (collectively the “United States”) and Christopher Neary (“Neary”), Sherman Barton (“Barton”), and Vertical Source, Inc. (“VSI,” and together with Neary, Barton, and the United States, “the Parties”), through their authorized representatives.

RECITALS

A. At all relevant times, Neary and Barton were owners of VE Source, LLC, a Delaware limited liability company principally engaged in the business of manufacturing and selling apparel pursuant to contracts with the federal government. At all relevant times, Neary also owned and controlled VSI, a New Jersey corporation that operates in the apparel industry.

B. On October 9, 2020, the United States filed an action in the United States District Court for the District of New Jersey captioned *United States v. Neary, et al*, No. 20-14167 (the “Civil Action”). On or about July 21, 2022, VE Source, LLC entered a consent judgment in that action. This agreement involves the remaining parties in that litigation.

C. The United States contends that it has certain civil claims against Neary, Barton, and VSI arising from conduct that occurred between

June 15, 2012 through and including October 28, 2019. More specifically, the United States contends that Neary, Barton, and VE Source made, or caused to be made, false claims for payment in connection with two government contracts: contract no. AG-3A94-C-12-0013 issued by the U.S. Department of Agriculture and contract No. SPE1C1-14-D-1081 issued by the U.S. Defense Logistics Agency (together, the “Contracts”). The United States contends that Neary, Barton, VSI, and VE Source made, or caused to be made, false statements concerning VE Source’s status as a service-disabled, veteran-owned small business. The United States contends that the Contracts were awarded to VE Source based on false statements concerning its status as a service-disabled veteran-owned small business. That conduct is referred to below as the Covered Conduct.

D. Neary, Barton, and VSI do not admit or deny liability for the Covered Conduct. This Agreement is not a concession by the United States that its claims are not well-founded. Neary, Barton, and VSI agree not to make or permit to be made any public statement denying any of the Covered Conduct or creating the impression that the Covered Conduct is without factual basis. By way of example only, Neary, Barton, and VSI may state that the matter was amicably resolved by way of a civil settlement agreement in which they have neither admitted nor denied liability for the Covered Conduct.

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. Neary shall pay one hundred and twenty thousand dollars (\$120,000); Barton shall pay seventy-five thousand dollars (\$75,000); and VSI shall pay one hundred and eighty thousand dollars (\$180,000), for a total of \$375,000 (the “Settlement Amount”) to the United States, of which \$375,000 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office. Neary, Barton and VSI shall pay the Settlement Amount over a period of 60 months. The Settlement Amount shall be paid according to the following terms and conditions:

A. Within fourteen (14) days of the Effective Date of this Agreement, Neary shall make an initial payment of \$2,000 (“Neary’s Initial Payment”). Then, beginning on November 1, 2022, Neary shall make monthly payments of \$2,000 per month, for a total of \$120,000, inclusive of Neary’s Initial Payment. For the sake of clarity, Neary’s payments shall be in accordance with the Schedule of Payments attached hereto as Appendix A.

- B. Within fourteen (14) days of the Effective Date of this Agreement, Barton shall make an initial payment of \$1,500 (“Barton’s Initial Payment”). Then, beginning on February 1, 2023, Barton shall make monthly payments of \$1,500 per month, for a total of \$75,000, inclusive of Barton’s Initial Payment. For the sake of clarity, Barton’s payments shall be in accordance with the Schedule of Payments attached hereto as Appendix B.
- C. Within fourteen (14) days of the Effective Date of this Agreement, VSI shall make an initial payment of \$3,000 (“VSI’s Initial Payment”). Then, beginning on November 1, 2022, VSI shall make monthly payments of \$3,000 per month, for a total of \$120,000, inclusive of VSI’s Initial Payment. For the sake of clarity, VSI’s payments shall be in accordance with the Schedule of Payments attached hereto as Appendix C.
- D. If VSI is sold or merged, or if 30% or more of the shares of VSI’s stock is transferred, or if 30% or more of VSI’s assets are sold, merged, or transferred into another non-affiliated entity, VSI shall promptly notify the United States, and all remaining payments owed by VSI

pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.

- E. Neary, Barton and VSI may prepay, in whole or in part, their respective obligations under this Agreement without penalty or premium.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims), Paragraph 4 (concerning disclosure of assets), and Paragraph 8 (concerning default), below, and conditioned upon the United States' receipt of the Settlement Amount, the United States releases Neary, Barton, and VSI 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; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, alter ego liability, and fraud.

3. Notwithstanding the release given in Paragraph 2 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 other than Barton or Neary;
- 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;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Neary, Barton, and VSI have each 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. Neary, Barton, and VSI warrant that their respective Financial Disclosures are complete, accurate, and current as of the date they were executed and submitted by

each of Neary, Barton, or VSI. If the United States learns of asset(s) in which Neary, Barton, or VSI had an interest of any kind as of the date of submission (including, but not limited to, promises by insurers or other third parties to satisfy Neary's, Barton's or VSI'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 Neary, Barton, or VSI on, or in connection with, their respective Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth of Neary, Barton, or VSI set forth in the Financial Disclosures by 10% 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 as to Neary, Barton, or VSI, as appropriate, or (b) collect the full Settlement Amount in accordance with the Agreement plus one hundred percent (100%) of the net value of Neary's, Barton's, or VSI's previously undisclosed assets, payable solely by the party who failed to disclose his or its assets. If the United States brings a collection action based upon claims that Neary, Barton, or VSI failed to make an accurate disclosure, if the United States prevails in the action, the United States will also be entitled to receive from the party who failed to disclose his or its assets 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 as to Neary, Barton or VSI, then the party for whom the agreement is rescinded 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 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.

5. Neary, Barton, and VSI waive and shall not assert any defenses Neary, Barton and VSI 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.

6. Neary, Barton, and VSI fully and finally release 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 Neary, Barton, or VSI have 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 and the United States' investigation and prosecution thereof.

7. 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 Neary, Barton, or VSI, and their 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) Neary, Barton, or VSI's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) or civil or 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 Neary, Barton or VSI makes to the United States pursuant to this Agreement,

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 Neary, Barton, and

VSI, and Neary, Barton, and VSI 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, Neary, Barton, and VSI shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Neary, Barton, and VSI or any of its subsidiaries or affiliates from the United States. Neary, Barton, and VSI agree that the United States, at a minimum, shall be entitled to recoup from Neary, Barton, and VSI 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 Neary, Barton, and VSI's books and records and to disagree with any calculations submitted by Neary, Barton, and VSI or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Neary, Barton, or VSI, or the effect of any such Unallowable Costs on the amount of such payments.

8. The Settlement Amount represents the amount the United States is willing to accept in compromise of its civil claims arising from the Covered Conduct based upon Neary's, Barton's, and VSI's financial

conditions, respectively, as reflected in the Financial Disclosures referenced in Paragraph 4.

A. In the event that Neary, Barton, or VSI fail to pay their respective portions of the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, the party failing to pay their respective portion of the Settlement Amount shall be in Default of his or its payment obligations (“Default”). The United States will provide a written Notice of Default to the relevant party and that party shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Neary, Barton or VSI, as appropriate, or to such other representative as Neary, Barton or VSI shall designate in advance in writing. If Neary, Barton or VSI fail to cure their respective Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the defaulting party’s portion of the Settlement Amount shall become

immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance) of the defaulting party's portion of the Settlement Amount.

B. In the event of an Uncured Default, the party who is in default agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against the party or parties who have defaulted for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by Neary, Barton or VSI, as appropriate, to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Neary, Barton or VSI, as appropriate, and/or affiliated companies by any department, agency, or agent of the United States at the time of the Uncured Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at

common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of the Uncured Default, including referral of this matter for private collection. In the event the United States pursues private collection, the party who has defaulted and caused the United States to pursue private collection action agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, 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 opts to rescind this Agreement pursuant to this paragraph, Neary, Barton and VSI, as appropriate, waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States against Neary, Barton or VSI, as appropriate, within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. Neary, Barton or VSI, as appropriate, agree not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph,

either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

(C) In addition to the remedies for an Uncured Default set forth above, the United States has an additional remedy with respect to Barton's default. If Barton is in an Uncured Default, the United States may, at its sole discretion, file the Consent Judgment that is attached hereto as Appendix D within 3 business days of the Notice of Default. Barton agrees not to contest the Consent Judgment and/or collection action undertaken by the United States pursuant to this Agreement, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

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

10. Upon receipt of the first installment payments described in Paragraph 1(A), above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1)(A)(ii). If any party fails to make its payment as set forth in Paragraph 1(A), but others do, the United States agrees to execute a Stipulation of Dismissal as to any party who did make such payment, and to submit the same pursuant to Rule 41(a)(1)(B).

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

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

13. 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 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.

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

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

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

17. This Agreement is binding on Neary's, Barton's, and VSI's successors, transferees, heirs, and assigns.

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

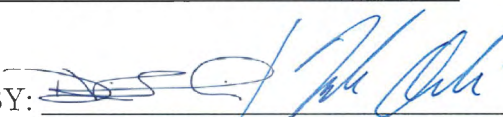
19. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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THE UNITED STATES OF AMERICA

Dated: August 1, 2022

BY:

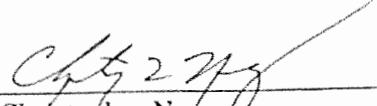
A handwritten signature in blue ink, appearing to be "D. V. Simunovich", written over a horizontal line.

DAVID V. SIMUNOVICH
MARK C. ORLOWSKI
Assistant United States Attorneys
United States Attorney's Office
District of New Jersey

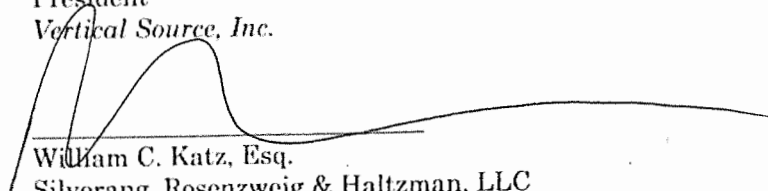
VERTICAL SOURCE, INC.

Dated: 7/28/22

BY:

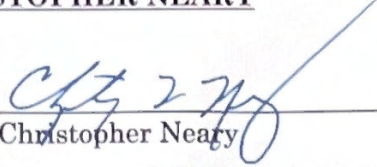

Christopher Neary
President
Vertical Source, Inc.

Dated: 7/28/22


William C. Katz, Esq.
Silverang, Rosenzweig & Haltzman, LLC
Woodlands Center, Suite 300
900 East Eighth Avenue
King of Prussia, PA 19406
Counsel for Vertical Source, Inc.

CHRISTOPHER NEARY

Dated: 7/28/22



Christopher Neary

Dated: 7/28/2022

Lee Vartan

Lee Vartan, Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052
Counsel for Christopher Neary

SHERMAN BARTON

Dated: July 25, 2022

Sherman Barton *Sherman Barton*
Sherman Barton

Dated: 7/25/22

Lee Vartan
Lee Vartan, Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052
Counsel for Sherman Barton

APPENDIX A

SCHEDULE OF PAYMENTS – CHRISTOPHER NEARY

Within 14 Days of Effective Date of the Settlement Agreement	\$2,000.00
November 1, 2022	\$2,000.00
December 1, 2022	\$2,000.00
January 1, 2023	\$2,000.00
February 1, 2023	\$2,000.00
March 1, 2023	\$2,000.00
April 1, 2023	\$2,000.00
May 1, 2023	\$2,000.00
June 1, 2023	\$2,000.00
July 1, 2023	\$2,000.00
August 1, 2023	\$2,000.00
September 1, 2023	\$2,000.00
October 1, 2023	\$2,000.00
November 1, 2023	\$2,000.00
December 1, 2023	\$2,000.00
January 1, 2024	\$2,000.00
February 1, 2024	\$2,000.00
March 1, 2024	\$2,000.00
April 1, 2024	\$2,000.00
May 1, 2024	\$2,000.00
June 1, 2024	\$2,000.00
July 1, 2024	\$2,000.00
August 1, 2024	\$2,000.00
September 1, 2024	\$2,000.00
October 1, 2024	\$2,000.00
November 1, 2024	\$2,000.00
December 1, 2024	\$2,000.00
January 1, 2025	\$2,000.00
February 1, 2025	\$2,000.00
March 1, 2025	\$2,000.00
April 1, 2025	\$2,000.00
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June 1, 2025	\$2,000.00
July 1, 2025	\$2,000.00
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September 1, 2025	\$2,000.00
October 1, 2025	\$2,000.00
November 1, 2025	\$2,000.00
December 1, 2025	\$2,000.00

January 1, 2026	\$2,000.00
February 1, 2026	\$2,000.00
March 1, 2026	\$2,000.00
April 1, 2026	\$2,000.00
May 1, 2026	\$2,000.00
June 1, 2026	\$2,000.00
July 1, 2026	\$2,000.00
August 1, 2026	\$2,000.00
September 1, 2026	\$2,000.00
October 1, 2026	\$2,000.00
November 1, 2026	\$2,000.00
December 1, 2026	\$2,000.00
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February 1, 2027	\$2,000.00
March 1, 2027	\$2,000.00
April 1, 2027	\$2,000.00
May 1, 2027	\$2,000.00
June 1, 2027	\$2,000.00
July 1, 2027	\$2,000.00
August 1, 2027	\$2,000.00
September 1, 2027	\$2,000.00

APPENDIX B

SCHEDULE OF PAYMENTS – SHERMAN BARTON

Within 14 Days of Effective Date of the Settlement Agreement	\$1,500.00
February 1, 2023	\$1,500.00
March 1, 2023	\$1,500.00
April 1, 2023	\$1,500.00
May 1, 2023	\$1,500.00
June 1, 2023	\$1,500.00
July 1, 2023	\$1,500.00
August 1, 2023	\$1,500.00
September 1, 2023	\$1,500.00
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July 1, 2027	\$1,500.00
August 1, 2027	\$1,500.00
September 1, 2027	\$1,500.00
October 1, 2027	\$1,500.00
November 1, 2027	\$1,500.00
December 1, 2027	\$1,500.00

APPENDIX C

SCHEDULE OF PAYMENTS – VERTICAL SOURCE, INC.

Within 14 Days of Effective Date of the Settlement Agreement	\$3,000.00
November 1, 2022	\$3,000.00
December 1, 2022	\$3,000.00
January 1, 2023	\$3,000.00
February 1, 2023	\$3,000.00
March 1, 2023	\$3,000.00
April 1, 2023	\$3,000.00
May 1, 2023	\$3,000.00
June 1, 2023	\$3,000.00
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February 1, 2027	\$3,000.00
March 1, 2027	\$3,000.00
April 1, 2027	\$3,000.00
May 1, 2027	\$3,000.00
June 1, 2027	\$3,000.00
July 1, 2027	\$3,000.00
August 1, 2027	\$3,000.00
September 1, 2027	\$3,000.00

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
SHERMAN BARTON,)	
)	
Defendant.)	

CONSENT JUDGMENT

Plaintiff United States of America (the “United States”) and Defendant Sherman Barton (“Barton,” and together with the United States, the “Parties”), hereby stipulate, agree and consent to the entry of this judgment based upon the following uncontested allegations:

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331, 1345, 1367(a). Barton consents to the jurisdiction of the United States District Court for the District of New Jersey for the resolution of this dispute.
2. On the 25th day of July, 2022, Barton entered into a Settlement Agreement with the United States for the purpose of resolving a dispute (the “Settlement Agreement”). A copy of the Settlement Agreement is attached hereto as Exhibit 1 and incorporated by reference herein.
3. Under the terms of the Settlement Agreement, Barton agreed to pay to the United States the sum of \$75,000 (the “Barton Settlement Amount”). Under the terms of Settlement Agreement, Barton was obligated to pay \$1,500 within 14 days of the parties signing the Settlement

Agreement, followed by monthly installments of \$1,500 to commence on February 1, 2023, until Barton fulfilled his obligation to pay the Barton Settlement Amount (\$75,000).

4. In the Settlement Agreement, Barton also agreed that if he defaulted and failed to make a required payment (triggering an “Uncured Default” as defined in the Settlement Agreement), the United States may file a Consent Judgment against Barton in the amount of the unpaid balance of the Barton Settlement Amount.

5. Barton has failed to make one or more payments in accordance with the Settlement Agreement and is in now in an Uncured Default under the terms of the Settlement Agreement.

6. Concurrent with the filing of this Consent Judgment, the United States has filed an Attachment 2 setting forth a statement of debt, showing the amount due and owing under the Settlement Agreement as of the date of default.

ACCORDINGLY, THIS COURT enters judgment for the United States against Barton in the amount set forth in Attachment 2, plus post-judgment interest at the rate of 10% per annum, compounded daily from the date this Consent Judgment, is entered until it is satisfied. This Court retains jurisdiction over this action.

IT IS SO ORDERED in the District of New Jersey this ___ day of _____, in the year _____.

UNITED STATES DISTRICT JUDGE

The undersigned consent to the entry of this Consent Judgment:

Dated: July 25, 2022

Sherman Barton


Sherman Barton

Dated: 7/25/22

Lee Vartan

Lee Vartan, Esq.
Chiesa Shahinian & Giantomasi PC
One Boland Drive
West Orange, NJ 07052
Counsel for Sherman Barton

Dated: August 1, 2022



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