

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES, <i>ex rel.</i>)
PERRY CHOMYN AND ROBIN SWAIN)
Relators,)
)
vs.)
)
FORCE PROTECTION, INC., f/k/a)
TECHNICAL SOLUTIONS GROUP,)
MICHAEL WATTS, GORDON McGILTON,)
TED McQUINN, THOMAS H. THEBES, Jr.,)
and FRANK KAVANAUGH)
)
Defendants.)

C/A No. 2:05-1906-DCN

UNDER SEAL

JOINT STIPULATION OF DISMISSAL

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure and the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b)(1), and in accordance with the terms of the Settlement Agreement between the United States, Relators, and Defendant Force Protection, Inc., ("Settlement Agreement") (attached as Exhibit 1), the United States and Relator hereby stipulate, through their undersigned counsel, to the entry of an order dismissing this case as to Force Protection, Inc. with no additional costs as to Relators, the United States, or Force Protection, Inc. No answer or motion for summary judgment has been filed by any adverse party.

The dismissal shall be with prejudice as to the Relators. The dismissal shall be with prejudice as to claims of the United States for the Covered Conduct to the extent provided in the Settlement Agreement.

Relators stipulate that the Settlement Agreement and the settlement amount are fair, adequate, and reasonable under all the circumstances as defined by 31 U.S.C. § 3730(c)(2)(B).

The United States and Relators respectfully request that the Court enter an order in the form of the proposed order attached.

Respectfully submitted,

COUNSEL FOR THE UNITED STATES:

UNITED STATES ATTORNEY
REGINALD I. LLOYD

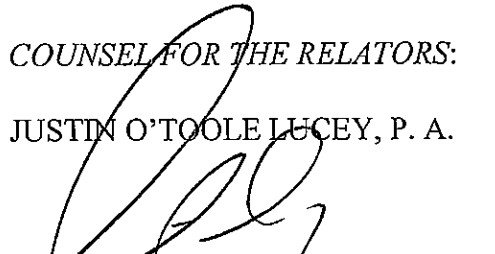
By:


S/Frances C. Trapp

FRANCES C. TRAPP (#6376)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
(803) 929-3000

COUNSEL FOR THE RELATORS:

JUSTIN O'TOOLE LUCEY, P. A.


Justin Lucey (5613)
415 Mill Street
P. O. Box 806
Mt. Pleasant, South Carolina 29465
(843)849-8400

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (“the Settlement Agreement”) is made this 23rd day of August 2006, by and among (i) the United States Government, through the Department of Justice (the “United States”), (ii) Force Protection, Inc. (“Force”) and (iii) Perry Chomyn and Robin Swain (“Relators”). The United States, Force and Relators hereinafter are jointly referred to as the “Parties.”

II. RECITALS

- A. Force Protection, Inc. is a Nevada corporation, which manufactures military vehicles. Force’s headquarters and manufacturing facility are located in Ladson, South Carolina.
- B. On September 23, 2005, Relators filed an amended *qui tam* suit in the United States District Court for the District of South Carolina, *U. S. Ex rel Chomyn and Swain vs. Force Protection, Inc. et al* (Civ. 2:05-1906-Judge Norton), (the “*Qui Tam* Action”), alleging that Force knowingly did not comply with the terms of the military contracts set forth in the complaint. The Allegations asserted in the *Qui Tam* Action are hereinafter referred to as “the Covered Conduct.”
- C. Force disputes the allegations in the *Qui Tam* Action and denies any wrongdoing.
- D. WHEREAS, the Parties mutually wish to avoid litigation relating to the Covered Conduct and are desirous of a final negotiated settlement and compromise of their disputes, as more fully set forth herein.

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III. TERMS OF AGREEMENT

NOW, THEREFORE, in reliance upon the representations contained herein and in consideration of the mutual promises, covenants, and obligations set forth below, and in resolution of the issues relating to the Covered Conduct, and for good and valuable consideration as stated herein, receipt of which is acknowledged by the Parties, the Parties agree as follows:

1. After the execution of this Settlement Agreement, Force shall-
 - a. Make cash payments to the United States of \$1,800,000.00 plus interest, as provided on the following payment schedule:
 - i. Within five (5) business days of the execution of this Settlement Agreement, Force shall pay to the United States the sum of \$600,000.00;
 - ii. On or before the ninetieth day following the signing of the Settlement Agreement, Force shall pay to the United States the sum of \$615,534.25;
 - iii. On or before the one hundred and eightieth day following the signing of the Settlement Agreement, Force Shall pay to the United States the sum of \$607,767.12.
 - b. Force acknowledges that, except when specifically agreed by the United States, the United States has by statute and regulation a right of setoff, and Force confirms that it will not contest, now or hereafter, any setoff made pursuant to said statutes and regulations of any future payments due to Force from any United States government contract payments in order to satisfy any default by Force of its obligations under paragraph 1(a) fo this Settlement Agreement.
 - c. The total value of this paragraph is principle \$1,800,000 plus the agreed upon interest rate of 5.25% (\$23,301.37) for a total Settlement Amount of \$1,823,301.37.
 - d. Force shall contemporaneously provide Relator's counsel with a copy of each payment transmittal.

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2. Contingent upon the United States receiving the Settlement Amount payments from Force and as soon as feasible after receipt of each payment identified in paragraph 1, the United States agrees to pay the Relators as follows - -

- a. The United States will pay Relators \$105,000.00 of the \$600,000 cash payment to be made by Force within a reasonable time after the later of the executing this Settlement Agreement or the Court's acceptance thereof, representing a 17.5% Relator's share of the cash payment made pursuant to paragraph 1(a)(i);
- b. The United States shall pay \$107,718.45 to relator within a reasonable time after receipt of the \$615,534.25 due on or before the ninetieth day following the signing of the Settlement Agreement under paragraph 1, representing a 17.5% Relator's share of Force's payment made pursuant to paragraph 1(a)(ii);
- c. The United States shall pay \$106,359.24 to relator within a reasonable time after receipt of the \$607,767.12 due on or before the one hundred and eightieth day following the signing of the Settlement Agreement under paragraph 1, representing a 17.5% Relator's share of Force's payment made pursuant to paragraph 1(a)(iii).

The amounts in total shall be the Relator's share pursuant to 31 U.S.C. § 3730(d).

3. Force and Relators herein agree to resolve Force's statutorily obligated duty under the False Claims Act to pay Relators for their attorney fees, costs and expenses pursuant to 31 U.S.C. § 3730(d)(1), to wit: Force will pay Relators' counsel \$60,000 within five (5) days of the full execution of this Settlement Agreement. Further, to resolve all matters pursuant to 31 U.S.C. § 3730(h) as filed in the complaint, Force will pay \$45,000 to Relators within five (5) days of the full execution of this Settlement Agreement.

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4. Contemporaneously with the signing of this Settlement Agreement, the Parties shall execute the attached Stipulation of Dismissal and Proposed Order (Exhibit A), in which the United States and Relators agree to dismiss the *Qui Tam* Action with prejudice subject to the terms of the Settlement Agreement. The United States shall file the Stipulation of Dismissal and Proposed Order with the United States District Court for the District of South Carolina within five (5) business days after the receipt of first payment under this Settlement Agreement.

5. Pursuant to the terms of this Settlement Agreement and receipt of the Settlement Proceeds referenced in paragraph 1, the United States shall release and have no further civil or administrative monetary claims or cause of action against Force, including its current and former directors, officer, employees, agents, parents, subsidiaries, affiliates, successors, and assigns under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or any other statute creating causes of action for damages or penalties for the submission of false or fraudulent claims, or at common law for fraud, payment by mistake, unjust enrichment or breach of contract, for the Covered Conduct. This Agreement does not release Force, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability with respect to:

- a. any claims for deficient or defective products, for personal or property injury, or for other consequential damages arising from the direct or indirect sale or delivery by Force of any deficient or defective product, or from breach of express or implied product warranty other than the Covered Conduct;
- b. any claims based on such obligations as are created by this Settlement Agreement;
- c. any claims that the United States may have under the Internal Revenue Code, Title 26 of the United States Code;

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- d. the suspension or debarment of rights of any federal agency; and
- e. any criminal liability.

6. Force fully and finally releases the United States, its agencies, employees, servants, and agents, and the Relators and their counsel from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Force has asserted, could have asserted, could have asserted, or may assert against the foregoing entities and individuals related to the Covered Conduct.

7. Conditioned upon receipt of the full payment as provided in paragraph 2, the Relators, for themselves individually, and for their heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, agree to release Force, its current and former directors, officers, employees, shareholders, agents, parents, subsidiaries, affiliates, successors, and assigns, from (a) any liability to Relators arising from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Relators asserted in the *Qui Tam* Action including, but not limited to any liability to Relators arising under 31 U.S.C. § 3730(d), and (b) any and all claims that the Relators have or may have against Force, whether personal, property, economic or non-economic, of every nature in kind whatsoever, whether at law or in equity, whether at common law or pursuant to federal, state or local statutes, ordinances or regulations, whether vested or contingent, whether now known or unknown, whether foreseen or unforeseen, whether liquidated or unliquidated, whether matured or unmatured, whether disputed or undisputed, including but not limited to, any claim arising from or connected to any relationship between or involving the Relators and Force. This release


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shall be broadly construed to include any claim the Relators have or may have against Force.

8. Conditioned upon final receipt of payment described in paragraph 2 pertaining to the Relators' share, the Relators, for themselves individually, and for their heirs, personal representatives, legal representatives, successors, agents and assigns, fully and finally release, waive, and forever discharge the United States, its officers, agents, and employees, from any claims arising from the filing of the *Qui Tam* Action, and from any other claims for a share of the Settlement Amount. This Settlement Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Settlement Agreement.

9. Relators agree that this Settlement Agreement is fair, adequate, and reasonable under all the circumstances and that they will not challenge this Settlement Agreement pursuant to 31 U.S.C. § 703(c)(2)(B).

10. It is agreed that all costs (as defined in the Federal Acquisition Regulations (FAR) 31.205-46) incurred by or on behalf of Force, its present or former officers, directors, employees, shareholders, and agents in connection with (1) the matters covered by this Settlement Agreement; (2) the Government's audits and investigations of the matters covered by this Settlement Agreement; (3) Force's investigation and defense of the matters covered by this Settlement Agreement and corrective actions related thereto; (4) the negotiation and performance of this Settlement Agreement; and (5) the payment Force makes to the United States pursuant to this Settlement Agreement, including any costs and attorney's fees, shall be unallowable costs for Government contract accounting purposes. These amounts shall be separately accounted for by Force by identification of costs incurred: 1) through accounting records to the extent that is



possible; or 2) through itemized estimates where no accounting records are available.

11. Force waives and will not assert any defenses Force may have to any criminal prosecution relating to the *Qui Tam* Action that may be based in whole or in part on a Constitution 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 Settlement Agreement bars a remedy sought in such criminal prosecution. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

12. In the event of a voluntary or involuntary liquidation or reorganization case by or against Force under bankruptcy, receivership or other insolvency law, Force agrees not to contest or oppose any motion filed by the United States seeking relief from or modification of the automatic stay imposed by 11 U.S.C. § 362(a) nor to seek relief under 11 U.S.C. § 105 to enjoin or restrain the United States from recovering monies owed by Force arising out of this agreement through offset. Force recognizes that this express waiver is in consideration for the ability to make deferred payments of the Settlement Amount as provided in paragraph one (1) above.

13. The Parties agree that, if the United States District Court for the District of South Carolina fails to enter the Order of Dismissal dismissing *U.S. ex rel Chomyn and Swain v. Force Protection, Inc. Et al* (Civ.2:05-1906-Judge Norton) with prejudice, this Settlement Agreement shall be null and void *ab initio*. Should the Court fail to enter the Order of Dismissal dismissing Civil Action Civ. 2:05-1906 with prejudice, the United States will return any payments Force may have made pursuant to paragraph (1), the Relators will return any payments the United

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States may have made pursuant to paragraph(2) and will return any payments Force may have made pursuant to paragraph (3) within a reasonable time after the Court's action.

14. This Settlement Agreement is intended to be for the exclusive benefit of those entities and individuals released herein, and by this Settlement Agreement the Parties do not waive, compromise, or release any claims or causes of action against any other entity or individual.

15. This Settlement Agreement constitutes the complete agreement between the parties on the subject matter covered herein. This Settlement Agreement may not be amended except by written consent of the Parties. This Settlement Agreement shall be binding upon the Parties hereto, and their heirs, personal representatives, legal representatives, successors, agents and assigns. In the event of a breach of this Settlement Agreement, the non-breaching Party or Parties shall be entitled to all legal and equitable remedies. In the event of any action to enforce this Settlement Agreement, the prevailing Party or Parties shall be entitled to recover reasonable attorney's fees and expenses; however, the United States shall only be liable for any such attorney's fees and expenses to the extent specifically authorized by federal statute.

16. This Settlement Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between the Parties under this Settlement Agreement will be the United States District Court, District of South Carolina, and it is the intent of the Parties that said Court retain jurisdiction over this Settlement Agreement.

17. This Settlement Agreement is executed in multiple originals, and each shall be of the same force and effect at law as an original.

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18. The Parties hereto agree and represent that counsel has reviewed and revised the Settlement Agreement on their behalf and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in an interpretation of this Settlement Agreement or any amendments hereto.

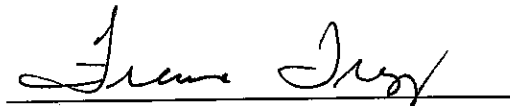
19. Each person who signs this Settlement Agreement in a representative capacity warrants that he or she is duly authorized to do so.

20. All Parties consent to the disclosure of this Settlement Agreement, and Information about this Settlement Agreement, to the public.

COUNSEL FOR THE UNITED STATES:

UNITED STATES ATTORNEY
REGINALD I. LLOYD

By:

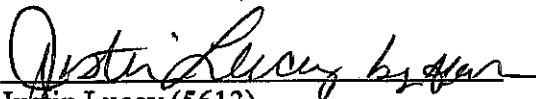

FRANCES C. TRAPP (#6376)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
(803) 929-3000

August 23, 2006



COUNSEL FOR THE RELATORS:

JUSTIN O'TOOLE LUCEY, P. A.

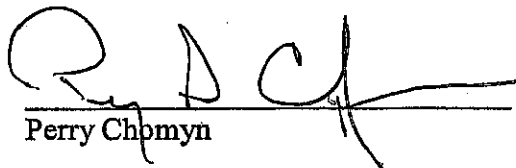


Justin Lucey (5613)
415 Mill Street
P. O. Box 806
Mt. Pleasant, South Carolina 29465
(843)849-8400

August 23, 2006

RELATORS:

August 14, 2006


Perry Chpmyn

August _____, 2006

Robin Swain

COUNSEL FOR FORCE PROTECTION, INC:

August _____, 2006

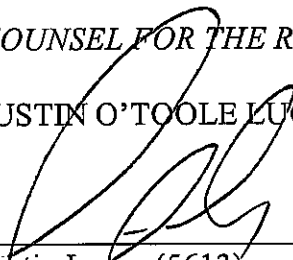
FORCE PROTECTION INC

August _____, 2006

By: _____

COUNSEL FOR THE RELATORS:

JUSTIN O'TOOLE LUCEY, P. A.



Justin Lucey (5613)
415 Mill Street
P. O. Box 806
Mt. Pleasant, South Carolina 29465
(843)849-8400

August _____, 2006

RELATORS:

August _____, 2006

Perry Chomyn

August _____, 2006

Robin Swain

COUNSEL FOR FORCE PROTECTION, INC:

August _____, 2006

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FORCE PROTECTION INC

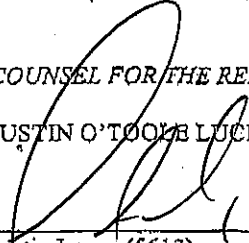
August _____, 2006

By: _____

FAX TO: (843) 849-8406

COUNSEL FOR THE RELATORS:

JUSTIN O'TOOLE LUCEY, P. A.


Justin Lucey (S613)
415 Mill Street
P. O. Box 806
Mt. Pleasant, South Carolina 29465
(843)849-8400

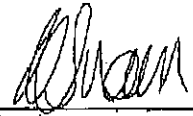
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RELATORS:

August _____, 2006

Perry Chomyn

August 14, 2006



Robin Swain

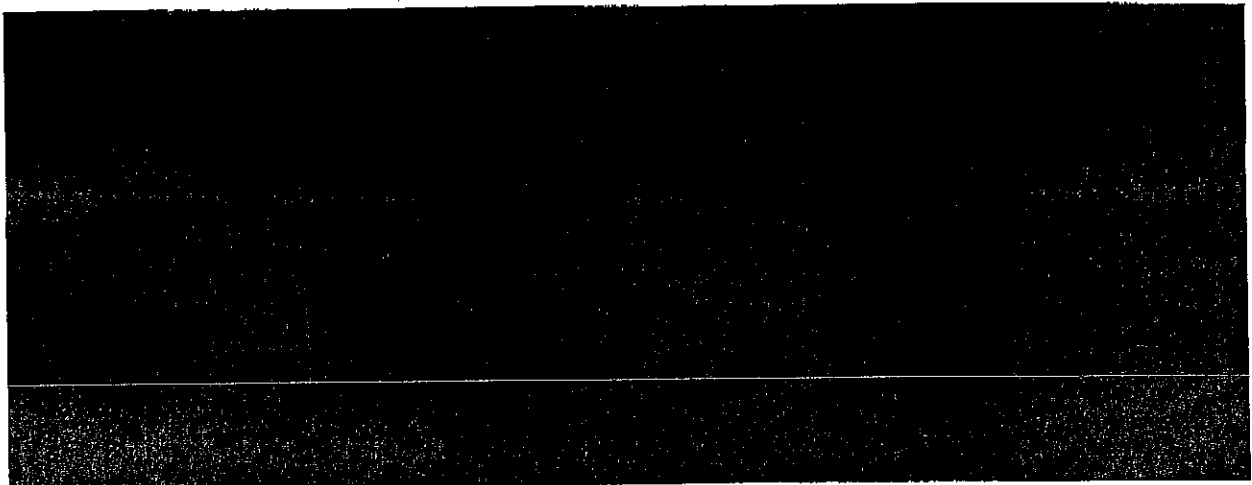
COUNSEL FOR FORCE PROTECTION, INC:

August _____, 2006

FORCE PROTECTION INC

August _____, 2006

By: _____



COUNSEL FOR THE RELATORS:

JUSTIN O'TOOLE LUCEY, P. A.

Justin Lucey (5613)
415 Mill Street
P. O. Box 806
Mt. Pleasant, South Carolina 29465
(843)849-8400


August _____, 2006

RELATORS:

August _____, 2006

Perry Chomyn

August 18, 2006



Robin Swain

COUNSEL FOR FORCE PROTECTION, INC:

August _____, 2006

FORCE PROTECTION INC

August _____, 2006

By: _____

ON BEHALF OF FORCE PROTECTION, INC.

COUNSEL FOR FORCE PROTECTION, INC.

By: *Buddy Haw*

August 17, 2006

COUNSEL FOR THE RELATORS:

JUSTIN O'TOOLE LUCEY, P. A.

Justin Lucey (5613)
415 Mill Street
P. O. Box 806
Mt. Pleasant, South Carolina 29465
(843)849-8400
COUNSEL FOR RELATORS

August _____, 2006

I hereby consent to this Settlement Agreement and retain jurisdiction to enforce the same:

UNITED STATES DISTRICT JUDGE

By: _____

August _____, 2006