

EXECUTION VERSION

FALSE CLAIMS ACTION SETTLEMENT AGREEMENT AND RELEASE

This False Claims Action Settlement Agreement and Release is entered into by the People of the State of California, acting through the California Department of Justice, Office of the Attorney General; Christopher J. Schroen; and BP Energy Company, BP America Production Company, BP Corporation North America Inc, BP Products North America Inc, and BP plc. The Parties, through their authorized representatives, intend for this Agreement to fully and finally resolve the claims as described below.

I. DEFINITIONS

- A. “**Action**” means the civil case entitled *State of California ex. rel. Christopher J. Schroen, et al. v. BP America Production Co. et al.*, San Francisco Superior Court Case No. CGC-12-522063.
- B. “**AGO**” means the California Department of Justice, Office of the Attorney General.
- C. “**AGO Complaint**” means collectively the AGO’s Complaint in Intervention in the Action, filed January 9, 2015, and its First Amended Complaint in Intervention, filed May 27, 2015.
- D. “**Agreement**” means this False Claims Action Settlement Agreement and Release.
- E. “**BP**” means collectively BP Energy Company, BP America Production Company, BP Corporation North America Inc, BP Products North America Inc, and BP plc.
- F. “**BP Related Parties**” means BP’s present or former respective partners, subsidiaries, parent companies, joint venturers, predecessors, successors-in-interest, assigns, and affiliates, and their respective officers, directors, representatives, owners, managers, shareholders, servants, current and former employees, agents, insurers, and attorneys (each in their individual and corporate capacities).

- G. “**Complaints in Intervention**” means collectively the Complaints in Intervention in the Action filed by the Intervening Political Subdivisions in March and April 2015, and the First Amended Complaints in Intervention filed by County Sanitation District No. 2 of Los Angeles County and Commerce Refuse to Energy Authority in January 2016.
- H. “**Conditions**” has the meaning given in Paragraph III(B).
- I. “**Court**” means the Superior Court of California in and for the County of San Francisco, Department 304.
- J. “**Government Code Section 12652(c)(8)(A) Notice**” means the forwarding by the AGO of the materials specified in Government Code Section 12652(c)(8)(A), i.e., copies of the First Amended Qui Tam Complaint and Qui Tam Plaintiff’s written disclosures to the prosecuting authorities of the political subdivisions whose funds were involved in the alleged violations of the California False Claims Act.
- K. “**Intervening Political Subdivisions**” means collectively the County of Santa Clara, the City and County of San Francisco, the County of Los Angeles, County Sanitation District No. 2 of Los Angeles County, and the Commerce Refuse to Energy Authority.
- L. “**NGS Participants**” means all participants in the California Department of General Services Natural Gas Services program from April 2003 to June 2017 on whose behalf the Department of General Services purchased natural gas from BP Energy Company.

- M. “**Non-Intervening Political Subdivisions**” means all political subdivisions of the State of California that were NGS Participants during any portion of the period from April 2003 to June 2017 other than the Intervening Political Subdivisions.
- N. “**Notice of Satisfaction of Conditions**” means the notice to be sent by the AGO to BP stating that all of the Conditions have been met, with copies to the Parties in accordance with Paragraph VI(H) of this Agreement.
- O. “**Parties**” means BP, the AGO acting for the People of the State of California, and Schroen. Each of the foregoing is a “**Party**.”
- P. “**Qui Tam Plaintiff**” means Christopher J. Schroen acting in his capacity as qui tam plaintiff.
- Q. “**Qui Tam Complaint**” means Schroen’s March 15, 2013 First Amended Complaint in the Action excluding Schroen’s Employment Claims and Schroen’s claims and prayers for expenses, costs and attorneys’ fees under Government Code 12652(g)(8).
- R. “**Qui Tam Plaintiff Statutory Attorneys’ Fees and Costs and Individual Employment Claims Settlement Agreement and Release**” means that separate agreement between BP and the Qui Tam Plaintiff and his counsel settling claims for attorney’s fees and costs and Schroen’s Employment Claims.
- S. “**Schroen**” means Christopher J. Schroen acting in both his capacity as qui tam plaintiff and individually.
- T. “**Schroen’s Employment Claims**” means the Sixth through Eleventh Causes of Action in Schroen’s First Amended Complaint, filed on March 15, 2013.
- U. “**Settlement Amount**” shall have the meaning given in Paragraph IV(B).
- V. “**Stipulated Order of Dismissal**” shall have the meaning given in Paragraph III(D).

II. RECITALS

- A. WHEREAS, on July 3, 2012, Schroen initiated the Action by filing his initial complaint asserting causes of action for damages and penalties on behalf of the State of California and named and unnamed political subdivisions under the California False Claims Act, and filed an amended complaint on March 15, 2013;
- B. WHEREAS, on January 9, 2015, the AGO filed a Complaint in Intervention in the Action that asserted causes of action under the California False Claims Act and Unfair Competition Law, and an Amended Complaint in Intervention on May 27, 2015;
- C. WHEREAS, in March and April 2015 the Intervening Political Subdivisions filed their Complaints in Intervention;
- D. WHEREAS, the AGO and Schroen will agree in a separate document on the Qui Tam Plaintiff's share pursuant to Government Code 12652(g)(2);
- E. WHEREAS, BP and Schroen will agree in a separate document upon a statutory expenses, fees, and costs payment pursuant to Government Code 12652(g)(8) and resolution of Schroen's Employment Claims referred to as the Qui Tam Plaintiff Statutory Attorneys' Fees and Costs and Individual Employment Claims Settlement Agreement and Release;
- F. WHEREAS, BP expressly denies it is liable for any of the claims asserted against it by any other Party in the Action; and
- G. WHEREAS, seeking to avoid the uncertainty, inconvenience and expense of litigation, and in reliance on the representations contained herein and in consideration of the mutual promises, covenants, and obligations stated herein, the Parties have

reached the agreement described below, which the Parties intend to be binding, admissible in Court, not covered by the mediation privilege, and enforceable under California Code of Civil Procedure Section 664.6.

III. CONDITIONS, APPORTIONMENT, AND TERMINATION RIGHTS

- A. **Executed Agreements.** This Agreement shall not become effective unless both this Agreement and the Qui Tam Plaintiff Statutory Attorneys' Fees and Costs and Individual Employment Claims Settlement Agreement and Release are fully executed by authorized representatives of the parties to each respective agreement.
- B. **Satisfaction of Conditions.** The AGO shall not send a Notice of Satisfaction of Conditions to BP unless and until all of the following conditions (the "**Conditions**") have been satisfied:
1. **Intervening Political Subdivision Releases.** The AGO has procured from each Intervening Political Subdivision a release substantially in the form of Exhibit A, attached hereto, that is signed by an authorized representative of each respective Intervening Political Subdivision, and the AGO has delivered each such signed release to the Parties in accordance with the Notice requirements of Paragraph VI(H) of this Agreement.
 2. **Government Code Section 12652(c)(8)(A) Notices.** The AGO represents that it sent the Government Code Section 12652(c)(8)(A) Notices and the AGO has provided to BP a written list of the Government Code Section 12652(c)(8)(A) Notices it sent in December 2014, and any subsequent such notices. The list will identify the date the notice was sent, the name of the

political subdivision and the name and address of the prosecuting authority of each political subdivision to whom the notice was sent.

3. **Stipulated Order of Dismissal.** The Court has entered the Stipulated Order of Dismissal substantially in the form of Exhibit B, attached hereto.
4. **Dismissals by Intervening Political Subdivisions and Schroen.** The Intervening Political Subdivisions and Schroen have filed Requests for Dismissal of their complaints with prejudice on the form approved by the California Judicial Council and the Court has dismissed with prejudice the respective complaints of the Intervening Political Subdivisions and Schroen.

C. **Apportionment Procedure.** Because of various factors including the large number of NGS Participants, the complexity of the underlying transactions, and the long period at issue (2003-2017), the AGO shall implement the following apportionment procedure:

1. The AGO shall develop a fair and reasonable apportionment of the portion of the Settlement Amount required to be apportioned to the Non-Intervening Political Subdivisions and Intervening Political Subdivisions, pursuant to Government Code Section 12652(g)(6).
2. The AGO shall move the Court to approve the apportionment, setting a hearing date that is at least 30 days after the notice given below in Paragraph III(C)(3).
3. The AGO shall notify all the political subdivision NGS Participants it identifies (both Intervening Political Subdivisions and Non-Intervening Political Subdivisions) of the apportionment and of the Court hearing.

- D. **Stipulated Order of Dismissal.** After Court approval of the apportionment and satisfaction of all Conditions other than the Stipulated Order of Dismissal, the Parties agree to propose a Stipulated Order of Dismissal in substantially the form attached hereto as Exhibit B, by which the Parties will request the dismissal with prejudice of the AGO Complaint and the Action.
- E. **Termination.** This Agreement is subject to termination by the Court on application of the AGO or BP in the event that the Conditions are not satisfied, after reasonable, good faith efforts have been made to satisfy them. In the event this Agreement is terminated, the Parties agree to request that the Court immediately set the case for trial. In the absence of termination, no Party may seek to request a new trial date, take discovery, or undertake any action in the Court in relation to the Action other than steps expressly required or permitted by this Agreement. This Agreement automatically terminates if the Qui Tam Plaintiff Statutory Attorneys' Fees and Costs and Individual Employment Claims Settlement Agreement and Release is terminated.

IV. PAYMENT OF SETTLEMENT CONSIDERATION

- A. BP agrees that within 10 days of the execution of this Agreement and the Qui Tam Plaintiff Statutory Attorneys' Fees and Costs and Individual Employment Claims Settlement Agreement and Release it will place the sum of one hundred two million dollars (\$102,000,000) into an interest-bearing account.
- B. The AGO will send to BP the Notice of Satisfaction of Conditions after the Conditions are satisfied in accordance with the Notice provision of Paragraph VI(H) of this Agreement. Unless BP files a motion objecting to the notice, BP must wire in accordance with the AGO wire instructions attached hereto as Exhibit C the sum of

one hundred two million dollars (\$102,000,000) plus any interest accrued in the interest-bearing account (the “Settlement Amount”) to the AGO within 15 days of the date of delivery of the Notice of Satisfaction of Conditions in accordance with Paragraph VI(H).

- C. If upon receipt of a Notice of Satisfaction of Conditions, BP disagrees that the Conditions have been satisfied, BP may file a motion with the Court objecting to the Notice of Satisfaction of Conditions within 15 days of the date of delivery of the Notice of Satisfaction of Conditions in accordance with Paragraph VI(H). If BP files such a motion, BP’s payment obligation is suspended. If the Court overrules BP’s objection, BP shall wire the AGO the Settlement Amount within 15 days of the date of the Court’s order overruling the objection.

V. RELEASE AND COVENANT NOT TO SUE

In consideration for the payment required by this Agreement and for the Recitals set forth in this Agreement, the Parties enter into a release and covenant not to sue, as follows:

- A. Subject to the exceptions in Paragraph V(B) below, and conditioned on BP’s full payment of the Settlement Amount to the AGO, the AGO for the People of the State of California, and Schroen release and covenant not to sue BP and the BP Related Parties from any and all claims, demands, and/or causes of action that (i) have been asserted in the Qui Tam Complaint, AGO Complaint or Complaints in Intervention; and (ii) could have been asserted by Schroen, the AGO, or the California Department of General Services, arising out of or related to the facts alleged in the Qui Tam Complaint, AGO Complaint or Complaints in Intervention. The AGO also, for all Non-Intervening Political Subdivisions, releases and covenants not to sue BP and the

BP Related Parties from any and all claims, demands, and/or causes of action under the California False Claims Act that have been asserted in the AGO Complaint or that could have been asserted by the AGO arising out of or related to the facts alleged in the AGO complaint. The AGO (whether on behalf of the People of the State of California or any Non-Intervening Political Subdivision) will not seek payments from BP for the settlement of these claims, or for any fees or costs related to the Action, other than the Settlement Amount in accordance with the terms of this Agreement. The AGO executes this release for the Attorney General in his official capacity.

- B. Excluded Claims. The following claims are specifically reserved and not released by this Agreement: (a) any liability based upon obligations created by this Agreement; (b) any liability of any person or entity other than BP or the BP Related Parties; (c) any liability to the State of California (or its departments or agencies) for any conduct other than acts arising out of or related to the facts and circumstances alleged in the Action; (d) any civil, criminal, or administrative liability to the State of California arising under the California Revenue and Taxation Code; (e) any criminal liability; (f) any liability related to any deficient or defective product or services, or liability related to any failure to deliver any product or services as required by any contract between any of the BP entities and the State of California (excluding for these purposes, any deliveries of natural gas made under the contracts at issue in the Action); (g) any liability arising from *People of the State of California ex rel. California Air Resources Board v. BP West Coast Products LLC*; *Contra Costa County Superior Court, Case No. C12-00567, judgment entered October 30, 2016*;

and (h) any liability arising from other pending AGO action(s) unrelated to the facts and circumstances alleged in the Action.

- C. This Agreement shall not serve to excuse or release any party from liability for any act or omission occurring after the date this Agreement is fully executed.
- D. The release set forth in Paragraph V(A) shall not be construed to preclude any other State agency, department, board or entity not a party to this Agreement from independently exercising their authority under any law, statute or regulation as against BP in matters unrelated to the facts and circumstances alleged in the Action.
- E. BP fully and finally releases Schroen, the AGO, the Attorney General and the State of California, their political subdivisions, departments, agencies, and all their respective directors, officers, current and former employees, servants, insurers, representatives, attorneys (each in their individual and corporate capacities) and agents from any claims, including attorney's fees, costs, and expenses of every kind and however denominated, that BP has asserted, could have asserted, or may assert in the future against them related to the facts and circumstances alleged in the Action.
- F. The AGO for the People of the State of California, Schroen and BP expressly waive and relinquish all rights and benefits afforded by Section 1542 of the California Civil Code, and do so understanding and acknowledging the significance and consequences of such specific waivers. Section 1542 of the California Civil Code states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.
- G. Thus, notwithstanding the provisions of Section 1542, and for the purposes of implementing a full and complete release and discharge, the AGO for the People of

the State of California, Schroen and BP acknowledge that this Agreement is also intended to include in its effect, without limitation, all claims covered by the releases in this Agreement which the Parties do not know or suspect to exist at the time of execution hereof, and that this Agreement contemplates extinguishment of any and all such claims.

- H. Nothing in this Agreement, including Paragraph VI(A), below, should be construed in any way to limit the scope of the releases in this Paragraph V.

VI. GENERAL

- A. This Agreement is intended to be for the benefit of the Parties only. Nothing contained herein shall be construed to create any third-party rights or private rights of action or to deprive any person of any private right under the law.
- B. The terms of this Agreement were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after full investigation, consultation with experienced legal counsel and arms-length negotiation.
- C. This Agreement is made without any trial or adjudication or court finding on any issue of fact or law, and is not a final order of any court or governmental authority.
- D. BP, the AGO, and Schroen represent and warrant, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized.
- E. This Agreement, including the Exhibits hereto, constitute the entire agreement and understanding between the Parties relating to the settlement of the Action (except for resolution of the Schroen Employment Claims and Schroen and Schroen's Counsel's claims for attorney's fees and costs, which are being settled by the Qui Tam Plaintiff

Statutory Attorneys' Fees and Costs and Individual Employment Claims Settlement Agreement and Release). This Agreement may be modified or amended only by a writing signed by all of the Parties.

- F. This Agreement shall be governed by the laws of the State of California without regard to any conflict of laws principles.
- G. In the event of any dispute arising from or relating to this Agreement, the Parties submit and consent to the exclusive jurisdiction of the Court. The Parties consent, and the Stipulated Order of Dismissal shall provide that the Court shall retain exclusive jurisdiction to hear any disputes arising from or relating to this Agreement.
- H. Any Notices permitted or required to be given under this Agreement shall be delivered by email and U.S. Mail as follows:

To the Attorney General's Office

Kenneth J. Sugarman
Kenneth.Sugarman@doj.ca.gov
California Department of Justice
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

And,

Jacqueline Dale
Jacqueline.Dale@doj.ca.gov
California Department of Justice
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102

And,

To BP

Jonathan W. Hughes
jonathan.hughes@apks.com
Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

And,

Timothy J. Carey
tjcarey@winston.com
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601

To Christopher J. Schroen

Niall McCarthy
nmccarthy@cpmlegal.com
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road, Suite 200
Burlingame, CA 94010

- I. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Facsimiles and other images of signatures, including electronically transmitted signatures shall constitute acceptable binding signatures for purposes of this Agreement.
- J. This Agreement shall become effective and binding upon execution by all of the Parties hereto.
- K. Upon the signing of this Agreement and the Qui Tam Plaintiff Statutory Attorneys' Fees and Costs and Individual Employment Claims Settlement Agreement and Release (or at an earlier time if mutually agreed by the Parties), counsel for the Parties will immediately jointly contact the Court in the Action to inform the Court that the Parties have reached a binding settlement and will request that the Court vacate the trial date in the Civil Action, presently set for January 11, 2018.

AGREED TO AND ACCEPTED:

FOR THE AGO:

XAVIER BECERRA
Attorney General of California

By: Kenneth J. Sugarman
KENNETH J. SUGARMAN
Deputy Attorney General

Dated: January 10, 2018

FOR QUI TAM PLAINTIFF:

CHRISTOPHER J. SCHROEN

By: _____
NIALL P. MCCARTHY
Cotchett, Pitre & McCarthy, LLP

Dated: _____

By: _____
CHRISTOPHER J. SCHROEN

Dated: _____

FOR BP:

By: _____
JONATHAN W. HUGHES
Arnold & Porter Kaye Scholer LLP

Dated: _____

By: _____
TIMOTHY L. MOOREHEAD
Managing Counsel

Dated: _____

FOR THE AGO:

XAVIER BECERRA
Attorney General of California

By: _____
KENNETH J. SUGARMAN
Deputy Attorney General

Dated: _____

FOR QUI TAM PLAINTIFF:

CHRISTOPHER J. SCHROEN

By:  _____
NIALL P. MCCARTHY
Cotchett, Pitre & McCarthy, LLP

Dated: 1/10/18 _____

By: _____
CHRISTOPHER J. SCHROEN

Dated: _____

FOR BP:

By: _____
JONATHAN W. HUGHES
Arnold & Porter Kaye Scholer LLP

Dated: _____

By: _____
TIMOTHY L. MOOREHEAD
Managing Counsel

Dated: _____

FOR THE AGO:

XAVIER BERTERA
Attorney General of California

By: _____
KENNETH J. SUGARMAN
Deputy Attorney General

Dated: _____

FOR QUI TAM PLAINTIFF:

CHRISTOPHER J. SCHROEN

By: _____
NIALL P. MCCARTHY
Cochett, Pitre & McCarthy, LLP

Dated: _____

By: cf
CHRISTOPHER J. SCHROEN

Dated: 01-09-18

FOR BP:

By: _____
JONATHAN W. HUGHES
Arnold & Porter Kaye Scholer LLP

Dated: _____

By: _____
TIMOTHY L. MOOREHEAD
Managing Counsel

Dated: _____

FOR THE AGO:

XAVIER BECERRA
Attorney General of California

By: _____
KENNETH J. SUGARMAN
Deputy Attorney General

Dated: _____

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CHRISTOPHER J. SCHROEN

By: _____
NIALL P. MCCARTHY
Cotchett, Pitre & McCarthy, LLP

Dated: _____

By: _____
CHRISTOPHER J. SCHROEN

Dated: _____

FOR BP:

By: _____
JONATHAN W. HUGHES
Arnold & Porter Kaye Scholer LLP

Dated: _____

By: Tim Moorehead
TIMOTHY L. MOOREHEAD
Managing Counsel

Dated: Jan. 10, 2018

FOR THE AGO:

XAVIER BECERRA
Attorney General of California

By: _____
KENNETH J. SUGARMAN
Deputy Attorney General

Dated: _____

FOR QUI TAM PLAINTIFF:

CHRISTOPHER J. SCHROEN

By: _____
NIALL P. MCCARTHY
Cotchett, Pitre & McCarthy, LLP

Dated: _____

By: _____
CHRISTOPHER J. SCHROEN

Dated: _____

FOR BP:

By: 
JONATHAN W. HUGHES
Arnold & Porter Kaye Scholer LLP

Dated: Jan. 10, 2018

By: _____
TIMOTHY L. MOOREHEAD
Managing Counsel

Dated: _____