DEPARTMENT OF COMMERCE
Bureau of Industry and Security

In the Matters of: Nordic Maritime Pte. Ltd. and Morten Innhaug Respondents;	Number 0004	[Docket 17-BIS- (consolidated)]

Partial Remand and Final Denial Order

This matter is before me to review the Administrative Law Judge's (ALJ) February 7, 2020 Recommended Decision and Order (RDO).[1] For the reasons discussed below, and upon review of the administrative record, I find there is sufficient evidence that Nordic Maritime Pte. Ltd. (Nordic) and Morten Innhaug (Innhaug and, collectively, Respondents) violated the Export Administration Regulations (EAR),[2] that Nordic did so knowingly, and that Nordic made false statements to the Bureau of Industry and Security (BIS) in the course of its investigation. I further find that the evidence supports the conclusion that Innhaug caused, aided, or abetted

[1] I received the certified copy of the record from the ALJ, including the original copy of the RDO, for my review on February 10, 2020. Following an extension of time authorized by the undersigned, both the Respondents and BIS each filed timely responses to the RDO and replies to those responses. I have considered the parties' submissions in this decision.

[2] The EAR originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (the EAA), which lapsed on August 21, 2001. The President continued the Regulations under the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1708, including during the time period of the violations at issue here. On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 (ECRA). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment, shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA

Nordic's unlawful reexport of the survey equipment in violation of EAR. The ALJ recommended a civil monetary penalty of $31,425,760, as well as a denial of export privileges until such time Respondents pay the civil monetary penalty. With respect to the RDO's monetary penalty recommendation, I conclude the analysis of damages in the RDO is incomplete.

For the following reasons, I affirm the findings of liability, modify the denial order to a period of 15 years, and vacate the civil monetary penalty, and remand this case to the ALJ for a reexamination of the civil monetary penalty.

I. Background[3]

BIS issued a charging letter to Respondent Nordic on April 28, 2017, alleging three violations of the EAR: (i) Nordic illegally reexported certain seismic survey equipment to Iran that were controlled by the EAR for national security and anti-terrorism reasons; (ii) Nordic acted knowingly in doing so; and (iii) Nordic made false and misleading statements to BIS during its investigation. BIS also issued a charging letter to Innhaug, alleging he aided and abetted Nordic in violating the EAR.

The Charging Letter issued against Nordic (Nordic Charging Letter) included the following specific allegations:

Charge 1 15 C.F.R. § 764.2(e) – Acting with Knowledge of a Violation

1. Between on or about May 1, 2012, and on or about April 4, 2013, Nordic Maritime transported and used items exported from the United States and subject to the Regulations with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with the items.

2. Nordic Maritime transported to and used in Iranian waters U.S.-origin maritime surveying equipment, including specifically compass birds and streamer sections,

[3] For a more fulsome description of the facts and procedural background of this case, the RDO is attached as an addendum to this Partial Remand and Final Denial Order.

classified under Export Control Classification Number ("ECCN") 6A001 and controlled for National Security and Anti-Terrorism reasons (hereinafter, "the items"). The items also were subject to the Iranian Transactions and Sanctions Regulations ("ITSR"), 31 C.F.R. Part 560, administered by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Nordic Maritime used the items to conduct a seismic survey of Iran's off-shore Forouz B natural gas field.

3. The United States has had a long-standing and widely known embargo against Iran.

4. At all times pertinent hereto, Sections 742.4, 742.8, and 746.7 of the Regulations imposed a BIS license requirement for the export or reexport of the items to Iran. In addition, Section 746.7 of the Regulations also prohibited the export or reexport of any item subject to the Regulations if the transaction was prohibited by the ITSR. At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized reexportation or supply, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.204-205.

5. In order to avoid duplication regarding transactions involving items subject to both the Regulations and the ITSR, Section 746.7 of the Regulations provided that authorization did not need to be obtained from both BIS and OFAC, but instead that authorization by OFAC under the ITSR was considered authorization for purposes of the Regulations as well.

6. However, Nordic Maritime did not seek or obtain authorization from BIS, or from OFAC, in connection with the items.

7. Nordic Maritime knew at all times pertinent hereto, including as subsequently admitted in a written submission to BIS dated April 15, 2014, that the items were of U.S.-origin and that it was aware of the U.S. embargo against Iran and related U.S. export controls, including through its own licensing history of BIS license requirements concerning similar items classified under ECCN 6A001 of the Regulations.

8. In addition, on or about April 11, 2012, Nordic Maritime was warned, via a letter to its Chairman, Morten Innhaug, that its use of the items in Iranian waters would violate U.S. law and would be "in direct breach of the terms of Re-Export License issued by the US Department of Commerce (Bureau of Industry and Security) in relation to use of the Equipment." (Parenthetical in original). Nordic Maritime received this warning letter from counsel to the company that at the time held a BIS reexport license for the items (hereinafter, "[Reflect Geophysical]") that had issued in July 2011.

9. Moreover, Nordic Maritime obtained a copy of the reexport license held by [Reflect Geophysical] no later than on or about June 29, 2012. The license by its terms did not authorize use of the items in Iranian waters or other reexport of the items to Iran by any person or entity, and specifically provided that "no transfer, resale, or re-

export of the controlled equipment is authorized without prior [U.S. Government] approval."

10. Notwithstanding the foregoing, Nordic Maritime transported the items to and used them in Iran's Forouz B natural gas field between on or about May 1, 2012, and on or about at least April 4, 2013, without the required U.S. Government authorization.

11. As it subsequently admitted in its April 15, 2014 written submission to BIS, Nordic Maritime used the items on a vessel that it had leased from a "Russian State owned company Seismic Geophysical Company" and "that had certain U.S.-origin seismic surveying equipment onboard (streamer sections and compass birds subject to the EAR and classified under ECCN 6A001) that were owned by" [Reflect Geophysical]. (Parenthetical in original). Moreover, Nordic Maritime admittedly conducted the "seismic survey in Iranian waters . . . under a contract that Nordic entered into with Mapna International FZE, a company based in Dubai, UAE." Furthermore, although feigning ignorance when it contracted to perform the seismic survey in Iranian waters that the survey on behalf of or for the benefit of Iran, Nordic Maritime admitted in its April 15, 2014 submission to BIS that "Mapna International has significant ties to Iran" and that "the work for which Mapna International was contracting was in furtherance of Mapna Group's contract with the National Iranian Offshore Oil Company to [] explore the Forouz B natural gas field."

12. In so transporting and using the items with knowledge that a violation of the Regulations had occurred or was about or intended to occur in connection with them, Nordic Maritime violated Section 764.2(e) of the Regulations.

Charge 2 15 C.F.R. § 764.2(a) – Reexport of Maritime Surveying Equipment to Iran Without Required License

13. BIS re-alleges and incorporates herein the allegations set forth in Paragraphs 1-12, *supra.*

14. Between on or about May 1, 2012, and on or about April 4, 2013, Nordic Maritime engaged in conduct prohibited by the Regulations when it reexported to Iran items subject to the Regulations without the required license.

15. Pursuant to Sections 742.4, 742.8, and 746.7 of the Regulations, the items—U.S.-origin maritime surveying equipment, including specifically compass birds and streamer sections, classified under Export Control Classification Number ("ECCN") 6A001 and controlled for National Security and Anti-Terrorism reasons—could not lawfully be exported or reexported to Iran without a BIS license. Section 746.7 of the Regulations also prohibited the export or reexport of any item subject to the Regulations if the transaction was prohibited by the ITSR. At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized reexportation or supply, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.204-205.

16. In order to avoid duplication regarding transactions involving items subject to both the Regulations and the ITSR, Section 746.7 of the Regulations provided that authorization did not need to be obtained from both BIS and OFAC, but instead that authorization by OFAC under the ITSR was considered authorization for purposes of the Regulations.

17. However, Nordic Maritime reexported the items to the Forouz B natural gas field in Iran without seeking or obtaining authorization from BIS, or from OFAC, in connection with the items. Nordic Maritime used the items to conduct a seismic survey of the Forouz B gas field in furtherance of Mapna Group's contract with the National Iranian Offshore Oil Company, an Iranian Government entity.

18. In so doing, Nordic Maritime violated Section 764.2(a) of the Regulations.

Charge 3 15 C.F.R. § 764.2(g) – False or Misleading Statements to BIS in the Course of an Investigation

19. BIS re-alleges and incorporates herein the allegations set forth in Paragraphs 1-18, *supra*.

20. On or about April 15, 2014, Nordic Maritime made false or misleading statements to BIS in the course of the investigation of the violations and the related unauthorized reexport to Iran described in Paragraphs 1-18, *supra*.

21. Specifically, Nordic Maritime made a written submission to BIS admitting that the company had acquired the items from [Reflect Geophysical] and that Nordic Maritime was aware that the items were of U.S. origin.

22. However, Nordic Maritime further stated that [Reflect Geophysical] had never "(1) advised Nordic that any of the equipment onboard the vessel was re-exported pursuant to a BIS export license," "(2) communicated to Nordic any BIS export license conditions" or "(3) provided a copy of the BIS license to Nordic." These statements were false or misleading.

23. In fact, Nordic Maritime knew that the items had been subject to a BIS reexport license issued in July 2011 to and was held by [Reflect Geophysical]. Nordic Maritime had been warned by counsel to [Reflect Geophysical], on or about April 11, 2012, via a letter to Nordic Maritime's Chairman, Morten Innhaug, that the items had been reexported pursuant to a BIS license. Moreover, on or about June 29, 2012, Nordic Maritime had obtained a copy of the license, including the license conditions, from [Reflect Geophysical].

24. In so making false or misleading statements to BIS during the course of an investigation, Nordic Maritime violated Section 764.2(g) of the Regulations.

Nordic Charging Letter (footnotes omitted).

BIS's charging letter against Innhaug (Innhaug Charging Letter) alleged:

Charge 1 15 C.F.R. § 764.2(b) – Causing, Aiding, and Abetting Unlicensed Reexports of Maritime Surveying Equipment to Iran

1. Between on or about May 1, 2012, and on or about April 4, 2013, Innhaug engaged in conduct prohibited by the Regulations by causing, aiding, abetting, counseling, commanding, inducing and/or permitting the unlawful reexport of U.S.-origin maritime surveying equipment to Iran by Nordic Maritime Pte Ltd., of Singapore ("Nordic Maritime").

2. At all pertinent times hereto, Innhaug was the Chairman and majority shareholder of Nordic Maritime, and directed and/or controlled its activities.

3. Between on or about May 1, 2012, and on or about April 4, 2013, Nordic Maritime engaged in conduct prohibited by the Regulations when it reexported to Iran items subject to the Regulations without the required U.S. Government authorization, in violation of Section 764.2(a) of the Regulations.

4. Pursuant to Sections 742.4, 742.8, and 746.7 of the Regulations, the items—U.S.-origin maritime surveying equipment, including specifically compass birds and streamer sections, classified under Export Control Classification Number ("ECCN") 6A001 and controlled for National Security and Anti-Terrorism reasons—could not lawfully be exported or reexported to Iran without a BIS license. Section 746.7 of the Regulations also prohibited the export or reexport of any item subject to the Regulations if the transaction was prohibited by the ITSR. At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized reexportation or supply, either directly or indirectly, of the items to Iran. *See* 31 C.F.R. §§ 560.203-.205.

5. In order to avoid duplication regarding transactions involving items subject to both the Regulations and the ITSR, Section 746.7 of the Regulations provided that authorization did not need to be obtained from both BIS and OFAC, but instead that authorization by OFAC under the ITSR was considered authorization for purposes of the Regulations.

6. However, Nordic Maritime reexported the items to the Forouz B natural gas field in Iran without seeking or obtaining authorization from BIS, or from OFAC, in connection with the items. Nordic Maritime used the items to conduct a seismic survey of the Forouz B gas field and did so effectively on behalf of or for the benefit of the Iranian Government.

7. As subsequently admitted by Nordic Maritime in a written submission to BIS dated April 15, 2014, Nordic Maritime operated a vessel (the M/V Orient Explorer) that it had leased from a "Russian State owned company Seismic Geophysical Company" and had "certain U.S.-origin seismic surveying equipment onboard (streamer sections

and compass birds subject to the EAR and classified under ECCN 6A001) that were owned by" [Reflect Geophysical]. (Parenthetical in original). Moreover, Nordic Maritime conducted the "seismic survey in Iranian waters . . . under a contract that Nordic entered into with Mapna International FZE, a company based in Dubai, UAE." Furthermore, although feigning ignorance at the time the contract was entered, Nordic Maritime admitted in its April 15, 2014 submission that "Mapna International has significant ties to Iran" and that "the work for which Mapna International was contracting was in furtherance of Mapna Group's contract with the National Iranian Offshore Oil Company to [] explore the Forouz B natural gas field."

8. On or about April 11, 2012, prior to Nordic Maritime's reexport of the items to Iran, Innhaug received a cease and desist letter sent to his attention from counsel to the company (hereinafter, "[Reflect Geophysical]") that at the time held a BIS reexport license for the items. That letter indicated [Reflect Geophysical's] understanding, which was accurate, that the M/V Orient Explorer was en route with the items on board and would be deployed in Iranian waters after making a port of call in Dubai, United Arab Emirates. The letter warned that Nordic Maritime's use of the items in Iranian waters would violate U.S. law and would be "in direct breach of the terms of Re-Export License issued by the US Department of Commerce (Bureau of Industry and Security) in relation to use of the Equipment." (Parenthetical in original).

9. As alleged above, Nordic Maritime reexported the items to and used them in Iran's Forouz B natural gas field beginning on or about May 1, 2012, in violation of the Regulations. In no later than June 2012, while conducting the seismic survey, Nordic Maritime obtained a copy of the license from [Reflect Geophysical]. The license by its terms did not authorize use of the items in Iranian waters or other reexport of the items to Iran by any person or entity, and specifically provided that "no transfer, resale, or re-export of the controlled equipment is authorized without prior [U.S. Government] approval." Nonetheless, Nordic Maritime continued to conduct the survey in violation of the Regulations until at least on or about April 4, 2013.

10. As Nordic Maritime's chairman and majority owner, Innhaug directed and/or controlled Nordic Maritime. In addition, he also had received actual notice providing him with personal knowledge that Nordic Maritime was about to engage, and then was engaging on an ongoing or continuing basis, in conduct in violation of the Regulations. Through his actions and/or failure to act, Innhaug caused, aided, abetted, counseled, commanded, induced and/or permitted Nordic Maritime's unlawful reexport of the items to Iran and their use in Iranian waters without the required U.S. Government authorization.

11. In so doing, Innhaug violated Section 764.2(b) of the Regulations.

Innhaug Charging Letter (footnotes omitted).

Nordic and Innhaug answered the charging letters on June 1, 2017, and requested a 30-day stay of the proceedings. The stay was denied, and the proceedings continued for approximately two years,[4] but there are a few events worth highlighting.

The parties disputed whether the Respondents had the ability to pay any fine should the Respondents be found liable. After some filings back and forth – and after being provided several opportunities to comply by the ALJ by way of orders on May 22 and 24, 2019 – the Respondents advised the ALJ that they would not participate in the upcoming trial. Respondents' counsel filed a notice on June 10, 2019 that counsel was not authorized by Respondents to appear at the hearing the next day to discuss Respondents' arguments regarding inability to pay any fine. At the June 11, 2019 hearing, the ALJ ruled that the Respondents would be precluded from raising any arguments regarding an inability to pay.

Following a hearing on June 11, 2019, and post-hearing briefing by the parties,[5] the ALJ issued the RDO. The ALJ found Respondents liable on all counts. The ALJ also recommended that Respondents be fined €23.6 million – converted to $31,425,760[6] – or twice the amount of Respondent Nordic's contract with Mapna. The ALJ recommended the civil monetary penalty be jointly and severally imposed on Respondents.

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[4] Part of the delay was the result of the Supreme Court's decision in *Lucia v. SEC*, 138 S Ct. 2044 (2018), in which the Court concluded many administrative law judges are "[o]fficers of the United States" for purposes of the Constitution's Appointments Clause. *See id.* at 2055. As a result, a new ALJ was assigned and for the most part was required to start over and redo the proceedings conducted before the Court's decision in *Lucia*. The events described *infra* occurred after the ALJ was appointed in compliance with the Court's ruling in *Lucia*.

In addition to the *Lucia*-related delays, the federal government experienced a lapse of appropriations from December 22, 2018 to January 25, 2019.

[5] In their post-hearing briefing before the ALJ, the Respondents sought to resurrect their already-barred argument regarding an inability to pay by way of two attachments. The ALJ struck those attachments and did not consider them. In their brief before the undersigned, Respondents again attach materials related to their purported inability to pay. For the reasons discussed in this Partial Remand and Final Denial Order, the Respondents have waived their ability to argue an inability to pay, and I did not consider the attachments to their brief.

[6] The ALJ used the conversion rate applicable when Nordic entered the contract with Mapna. Because the contract was dated "March 2012," the ALJ used March 1, 2012 for the conversion date. I agree March 1, 2012 is the appropriate conversion date.

II. Review Under Section 766.22

A. Jurisdiction

The undersigned has jurisdiction under Section 766.22 of the EAR.[7] While this case was pending before the ALJ, the Export Control Reform Act of 2018 (ECRA) became law. *See* Pub. L. No. 115-232 (2018) (codified at 50 U.S.C. §§ 4801-4852). At the time of the offenses, however, the previous statutory scheme, the Export Administration Act of 1979, had lapsed and, as noted above, the EAR was kept in effect under the International Emergency Economic Powers Act (IEEPA).

ECRA provided that the authority of the EAR and any judicial or administrative proceedings pending on the date of enactment would be unaffected. *See* 50 U.S.C. § 4826.

B. Liability

The RDO correctly sets out the standard for proving violations of the EAR. In particular, BIS must prove the allegations by reliable, probative, and substantial evidence. BIS's burden is one of preponderance of the evidence, which means it is more likely than not that the Respondents committed the violations charged.

The RDO contains a detailed review of the record relating to the merits in this case, and the findings of liability are affirmed.

1. Respondent Nordic Charge 2 – Reexporting Equipment to Iran[8]

The evidence in this case is conclusive that Respondent Nordic reexported seismic equipment to Iran without the license required under the EAR. That reexport violated 15 C.F.R. § 764.2(a). In fact, Nordic's own answer before the ALJ concedes this point, but argues that it

[7] Because the conduct at issue in this case took place in 2012 and 2013, those versions of the EAR govern the substantive aspects of the case.

The procedural aspects of this case are governed by the 2019 version of the EAR.

[8] The RDO considers Charge 2 first. For the sake of consistency, I will do so as well.

did not do so knowingly. Answer of Respondent Nordic Pte. and Demand for a Hearing ¶¶ 2, 6, 8-10, 17.

As the RDO correctly outlines, section 764.2(a) prohibits *all* violations of the EAR. In addition, violations of section 764.2(a) are strict liability offenses. *See In the Matter of Wayne LaFleur*, 74 Fed. Reg. 5916, 5918 (Feb. 3, 2009). BIS, therefore, need not prove knowledge to sustain a violation of section 764.2(a).

The parties do not dispute number of material facts. Neither party contests that the survey equipment at issue in this case was classified under Export Control Classification Number (ECCN) 6A001. The parties do not dispute that the equipment was possessed by Respondent Nordic in Iranian territorial waters, and was therefore reexported. The parties also agree that neither of the Respondents had a license to reexport the survey equipment.

These uncontested facts support the RDO's finding that Nordic violated the EAR by reexporting the survey equipment when it used the equipment in Iranian territorial waters. Even if the facts above were contested, the record amply supports that Nordic reexported the equipment without a license. I therefore affirm the RDO's finding on this count.

2. Respondent Nordic Charge 1 – Acting with Knowledge of an EAR Violation

The evidence in this case strongly supports the conclusion that Nordic reexported the survey equipment with knowledge that doing so would violate the EAR. *See* 15 C.F.R. § 764(e). The EAR defines "knowledge" as "not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence." 15 C.F.R. § 772.1. A factfinder can infer knowledge where the party exhibits a "conscious disregard of facts known to a person" or willful avoidance of such facts. *Id.*

In this case, the record is clear that Nordic was put on notice no later than April 2012 that the use of the survey equipment in Iranian waters would require an export license. The company that leased the seismic survey equipment, Reflect Geophysical, sent a cease and desist letter to Nordic that any use in Iranian waters would violate the license Reflect Geophysical obtained from BIS. Were this not enough, Reflect Geophysical provided a copy of the license to Nordic in June 2012.

Although it is clear Nordic had actual notice, even if one were not convinced, the RDO lays out a history of communications between Reflect Geophysical and Nordic concerning their dispute about the scope of the use of the equipment. I agree with the RDO's finding that "[t]hese communications . . . are telling and lead to the conclusion that the parties discussed the use of equipment in Iranian waters."

The record amply supports the RDO's statement that "[t]he evidence is conclusive" that Nordic had knowledge that using the survey equipment in Iranian waters would violate the EAR. I affirm the RDO's conclusion on this count.

3. Respondent Nordic Charge 3 – Making False and Misleading Statements

BIS also charged Nordic with making false statements during a purported voluntary disclosure reporting the conduct at issue in this case.[9] The evidence supports the RDO's finding that Nordic made false and misleading statements to BIS during its investigation, in violation of 15 C.F.R. § 764.2(g).

[9] The parties dispute whether Nordic's disclosure was truly voluntary, given that it was submitted after BIS had begun its investigation. The evidence in this case demonstrates that Respondents' purported voluntary disclosure came after BIS had begun its investigation and was therefore not a voluntary disclosure under the EAR. *See* 15 C.F.R. § 764.5(b)(3). I would note, however, that even if this were a voluntary disclosure. "a respondent who makes false statements to BIS during an investigation cannot properly claim, and should not be accorded, mitigation credit relating to the subject of those false statements." *In the Matter of Manoj Bhayana*, 76 Fed. Reg. 18,716, 18,718 (Apr. 5, 2011). Put more bluntly: "a respondent should not be allowed to reap any benefit from such false or misleading statements." *Id.*

I agree with the RDO's finding that BIS opened its investigation after it received Reflect Geophysical's April 17, 2012 letter to Nordic regarding the latter's possible use of the survey equipment in Iranian waters. The basis for Charge 3 was Nordic's April 15, 2014 letter to BIS. That letter mentioned an interview the company had with a BIS special agent regarding the conduct in this case.

In the April 15, 2014 letter, Nordic claimed Reflect Geophysical failed to advise Nordic that the survey equipment was subject to a BIS license, that there were license conditions regarding the survey equipment, and that Reflect Geophysical never provided a copy of the license to Nordic. As the RDO concluded, "[n]one of these statements were true." The April 2012 letter made reference to the BIS license and the conditions related thereto. Reflect Geophysical also provided a copy of the license with the June 2012 lease agreement between the companies.

The evidence supports the charge that Nordic's statements in the April 15, 2014 were false and misleading with respect to BIS's investigation. I therefore affirm the RDO's finding that Nordic made false and misleading statements to BIS.

4. Respondent Innhaug Charge 1 – Causing, Aiding, and Abetting Any Act Prohibited by the EAR

The evidence also supports the conclusion that Innhaug caused, aided, or abetted Nordic's unlawful reexport of the survey equipment in violation of 15 C.F.R. § 764.2(b).

Innhaug was, at all relevant times, the Chairman and majority shareholder of Nordic. Under the EAR, a corporate officer can be held liable for acts of the corporation. *See In the Matter of Trilogy Int'l*, 83 Fed. Reg. 9259, 9261 (Mar. 5, 2018) (citing a remand order from the Acting Under Secretary to treat a corporation and its executive separately because "it is well

established that a corporate officer can be charged with causing, aiding or abetting the corporation's underlying violations") (internal quotation marks omitted).

The April 11, 2012 cease and desist letter from Reflect Geophysical was addressed to Innhaug. As a result, he was aware of the concerns regarding the potential use of the survey equipment in Iranian waters. Innhaug was also a signatory to the time-charter agreement for the vessel used to carry the survey equipment into Iranian waters. That was, the RDO noted, "an integral part of the ultimate violation." Finally, Innhaug admitted to reviewing the April 15, 2014 letter to BIS, which formed the basis for the false and misleading statements charge against Nordic.

The evidence supports the conclusion that Innhaug aided and abetted Nordic's violations of the EAR, and I affirm the RDO's conclusion.

C. Penalties

The EAR permits the undersigned to impose: (1) a civil monetary penalty; (2) a denial of export privileges, and (3) an exclusion from practicing as a representative in a licensing transaction. *See* 15 C.F.R. § 764.3(a)(1)-(3). In addition, the relevant statutory provision in effect at the time of the offense permits imposition of a civil penalty or $289,238 per violation[10] or "an amount that is twice the amount of the transaction that is the basis of the violation with respect to the penalty imposed." 50 U.S.C. § 1705(b)(2)

1. Civil Monetary Penalty

The RDO recommended a civil monetary penalty jointly and severally on both Respondents. The ALJ took the value of the contract between Nordic and Mapna – €11.3

[10] The maximum civil penalty amount is subject to increase pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701 (2015). *See* 15 C.F.R. § 6.4(b)(4).

million – doubled it, as permitted under IEEPA, and converted it to U.S. dollars. The resulting penalty is $31,425,760. The ALJ did not suspend any portion of the fine.

The ALJ applied the factors used by BIS in settlement cases, found in 15 C.F.R. part 766, Supp. No. 1.[11] Although instructive, this case was not settled; rather, the case proceeded to a full hearing before an ALJ – a hearing that Respondents decided the day before to decline to participate. In any event, I agree with the ALJ's application of the factors, both mitigating and aggravating. I also agree with the RDO and BIS that IEEPA permits a civil monetary penalty that is "twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed." 50 U.S.C. § 1705(b)(2). In this case, the relevant transaction – that is, the transaction that caused the illegal reexport of the survey equipment to Iran – was the contract between Nordic and Mapna.

Respondents' conduct in this case was unquestionably serious, and it warrants a significant sanction.[12] The RDO analyzes the factors for settlement cases, but it does not provide any analysis regarding how this penalty fits into other cases. I agree with BIS's position before the ALJ that penalties in litigated cases should be higher than settlement cases based on similar conduct. Indeed, the EAR guidelines on settlement gave the respondents notice that "penalties for settlements reached after the initiation of litigation will usually be higher than those" that settle. 15 C.F.R. part 766, Supp. No. 1.

The record does not, at this point, support the civil monetary penalty amount recommended in this case. Even accounting for the fact that this case was litigated, the penalty here is disproportionate to similar cases charged by BIS notwithstanding that many of these cases

[11] The ALJ appropriately used the 2014 version of the C.F.R. to analyze the settlement factors.

[12] By using the term "serious," I am not implying that Respondents' conduct falls short of egregiousness, as noted in the EAR. *See* 15 C.F.R. part 766, Supp. No. 1, § IV.B. I instead leave that to the ALJ to consider on remand.

are subject to a lower statutory penalty amount. Further, even taking into account, for example, cases proceeding through litigation (even if defaulted), relating to exports to Iran, and with a sustained charge of a knowing violation of the EAR, the penalty in this case is out of proportion.[13] There are a number other cases in this vein where the Under Secretary imposed *no* civil penalty at all. *See, e.g.*, *In the Matter of Ali Asghar Manzarpour*, 73 Fed. Reg. 12,073 (Mar. 6, 2008) (three violations, including knowledge, and no civil penalty); *In the Matter of Teepad Electronic General Trading*, 71 Fed. Reg. 34,596 (June 15, 2006) (five violations, including knowledge, and no civil penalty); *In the Matter of Swiss Telecom*, 71 Fed. Reg. 32,920 (June 7, 2006) (nine violations, including knowledge, and no civil penalty); *In the Matter of Arian Transportvermittlungs GmbH*, 69 Fed. Reg. 28,120 (May 18, 2004) (two violations, including knowledge, and no civil penalty); *In the Matter of Adbulamir Mahdi*, 68 Fed. Reg. 57,406 (Oct. 3, 2003) (six violations, including knowledge, and no civil penalty); and *In the Matter of Jabal Damavand General Grading Company*, 67 Fed. Reg. 32,009 (May 13, 2002) (four violations, including knowledge, and no civil penalty).

In their briefing before the undersigned, both parties cite *In the Matter of Aiman Ammar*, 80 Fed. Reg. 57,572 (Sept. 24, 2015), as being in their favor. In that case, respondents settled a case with eight violations of the EAR related to reexport of computer equipment to Syria, including a charge related to a knowing violation. *Id.* at 57,574. The total value of the transactions at issue in that case was approximately $3.6 million. *Id.* at 57,573-57,575. The settlement agreement assessed a $7,000,000 civil monetary penalty, with all but $250,000 suspended for two years and conditioned on no further export control violations. *Id.* at 57,575. Similarly, at the hearing before the ALJ, BIS posited that *In the Matter of Yavuz Cizmeci*, 80

[13] This method of considering penalties was used in *In the Matter of Petrom GmbH International Trade*, and I agree with its utility. *See* 70 Fed. Reg. at 32,744 ("[T]he proposed denial order is consistent with penalties imposed in recent cases under the Regulations involving shipments to Iran.") (collecting cases).

Fed. Reg. 18,194 (Apr. 3, 2015), advanced BIS's penalty arguments. That case, however, simply confirms the analysis above: the ALJ on remand should conduct a proportionality analysis in this case. In *Cizmeci*, BIS charged the respondent with a single count of aiding and abetting violations of a temporary denial order related to the acquisition of a Boeing 747 aircraft by Iran Air. *Id.* at 18,194. The total value of that transaction was $5.3 million. *Id.* In the course of settling that case, BIS accepted a $50,000 civil penalty, less than 1% of the value of the transaction. *Id.* at 18,195.

Even cases related to false statements to BIS in the course of an investigation, there appears to be little precedent for a civil monetary penalty like the one given here. *See, e.g.*, *In the Matter of Manoj Bhayana*, 76 Fed. Reg. 18,716 (Apr. 5, 2011) (on Under Secretary review of a false statement to BIS during an investigation, no civil monetary penalty and a two-year denial order); *In the Matter of William Kovacs*, 72 Fed. Reg. 8967 (Feb. 28, 2007) (on Under Secretary review of a false statement to BIS during an investigation, a $66,000 civil monetary penalty and a five-year denial order); *see also In the Matter of Saeid Yahya Charkhian*, 82 Fed. Reg. 61,540 (Dec. 28, 2017) (settlement agreement containing a charge of making a "false or misleading statement to BIS and other U.S. Government officials" with no civil monetary penalty); *In the Matter of Berty Tyloo*, 82 Fed. Reg. 4842 (Jan. 17, 2017) (settlement agreement containing a charge of making a false statement to BIS with no civil monetary penalty).

A wider view of BIS's cases tells a similar story. In *In the Matter of Eric Baird*, 83 Fed. Reg. 65,340 (Dec. 20, 2018), BIS entered into a settlement agreement for 166 violations of the EAR, but with no knowledge charges. The parties settled for $17,000,000, with $7,000,000 suspended on the condition of prompt payment. *Id.* at 65,342. That case had a related criminal

resolution, in which Baird pled guilty to felony smuggling.[14] BIS settled a related case, consisting of 150 violations of the EAR, for $27,000,000, with $17,000,000 suspended. *In the Matter of Access USA Shipping, LLC. See* Order dated Feb. 9, 2017, available at www.bis.doc.gov. Similarly, the respondent in *In the Matter of Petrom GmbH International Trade*, 70 Fed. Reg. 32,743 (June 6, 2005), committed thirteen violations of the EAR, including a knowing violation of the EAR. The Under Secretary affirmed a civil penalty in the amount of $143,000 – the maximum amount permitted under the statute at the time – on transactions valued at approximately $100,000. *Id.* at 32,744, 32,750-51.

Baird and *Access USA* are not the outer limits of the penalties available in any case. But, compared to the number of violations here, and that none of the penalty in this case was suspended, there are questions about whether the penalty recommended in this case is proportional to Respondents' conduct in this case. During the hearing and in several portions of its brief before the ALJ, BIS argued these facts are "egregious," with the post-hearing briefing saying the facts here constitute "one of the most egregious set of facts ever encountered by BIS." If that is so, BIS should be able to make the record before the ALJ to conduct a comparative analysis.

Apart from the amount of the fine in this case, several of the cases above demonstrate that BIS occasionally suspends portions of a civil monetary penalty, particularly in cases with penalties over $1,000,000. *See Baird* (assessing a penalty of $17,000,000 with $10,000,000 suspended); *Access USA* (assessing a penalty of $27,000,000 with $17,000,000 suspended); *Ammar* (assessing a penalty of $7,000,000 with $6,750,000 suspended). The ALJ in this case did not suspend any of the civil penalty. Respondents argue in their briefing that BIS suspends at

[14] U.S. Dep't of Justice, "Former Florida CEO Pleads Guilty To Export Violations And Agrees To Pay Record $17 Million To Department Of Commerce," Dec. 14, 2018, https://www.justice.gov/usao-mdfl/pr/former-florida-ceo-pleads-guilty-export-violations-and-agrees-pay-record-17-million.

least a portion of the civil monetary penalty in 43% of cases since 2009. Without attesting to the veracity of that figure, it remains short of a majority. In any event, the significant penalties with a portion suspended in the cases above are all settlements; that is, the parties agreed to it. In this case, Respondents participated in the hearing, up to a point. They required BIS to prepare for and present at a hearing before the ALJ. Because I am vacating and remanding the civil monetary penalty, I need not decide at this point whether the suspension of any portion is appropriate. It may well not be, as the ALJ concluded in the RDO, but I will leave that issue open for the ALJ to consider on remand.

Given the range of outcomes in previous resolutions, it is preferable for the ALJ to conduct the proportionality analysis in the first instance. Although IEEPA – and now ECRA – permits a reviewing authority to impose twice the amount of the transaction, the ALJ on remand should reconsider the civil monetary penalty in light of the penalties issued in previous cases, recognizing some of them were the statutory maximum at the time. Respondents' conduct was serious, and they should be punished. The ALJ was correct that any penalty "should be such that it dissuades future violations of this sort, and acts as a strong deterrent against this type of behavior." Viewed through this lens, it may well be that the civil monetary penalty in case will be substantial. Perhaps it will remain unchanged. But the record would benefit from further development on the issue of proportionality.

As a result, I vacate the ALJ's imposition of a civil monetary penalty, and this case is remanded to the ALJ for a reexamination of the penalty in view of the guidance provided above.

2. Denial Order

In addition to the civil penalty, the ALJ recommended the imposition of a temporary denial order on Respondents to run until such time as Respondents pay the civil monetary penalty in full. Although Respondents have waived their inability-to-pay argument, I conclude

that a denial order unbounded in time does not serve the ends of justice. Accordingly, I conclude a denial order of 15 years will adequately vindicate BIS's interests in this case.[15]

A review of the same cases cited above – those related to Iran and a knowing violation of the EAR – is useful. In each of those, the Under Secretary affirmed denial orders for a specified period of years. *See, e.g.*, *In the Matter of Ali Asghar Manzarpour*, 73 Fed. Reg. 12,073 (Mar. 6, 2008) (affirming a 20-year denial order period); *In the Matter of Teepad Electronic General Trading*, 71 Fed. Reg. 34,596 (June 15, 2006) (affirming a 10-year denial order period); *In the Matter of Swiss Telecom*, 71 Fed. Reg. 32,920 (June 7, 2006) (affirming a 10-year denial order period); *In the Matter of Petrom GmbH International Trade*, 70 Fed. Reg. 32,743 (June 6, 2005) (affirming a 20-year denial order period); *In the Matter of Arian Transportvermittlungs GmbH*, 69 Fed. Reg. 28,120 (May 18, 2004) (affirming a 10-year denial order period); *In the Matter of Adbulamir Mahdi*, 68 Fed. Reg. 57,406 (Oct. 3, 2003) (affirming a 20-year denial order period); and *In the Matter of Jabal Damavand General Grading Company*, 67 Fed. Reg. 32,009 (May 13, 2002) (affirming a 10-year denial order period).

I conclude BIS's position requesting a 15-year denial period is appropriate, and I modify the denial order period to run 15 years from the date of this Partial Remand and Final Denial Order.

D. Miscellaneous Items

Several other items require brief consideration. First, Respondents requested a meeting with the undersigned to discuss the case. The EAR provides that the Under Secretary's "review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning" the RDO. 15 C.F.R. § 766.22(c). I

[15] The ALJ in fact potentially exceeded even BIS's requested denial order period. BIS requested a denial order of 15 years.

agree with BIS's argument that to do so would be a departure from the normal practice. In any case, it is unnecessary here. The record and RDO are clear and support the findings of liability. In addition, because I am vacating the monetary penalties, the ALJ will have the opportunity to hold arguments, should he so choose, to consider the remaining issue in this case; although I would note that Respondents declined to participate in the June 11, 2019 hearing, and there are reasons not to reward them for their choice.

Respondents also point to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)[16] for the proposition that "under the appropriate circumstances," I am permitted to grant a "waiver of civil penalties for statutory or regulatory violations by small entities." Although true, there are several problems with Respondents' request. The charging letters for both sets of Respondents point to the U.S. Small Business Administration's Ombudsman to discuss the potential applicability of the SBREFA. There is no evidence in the record that Respondents did so, and they do not claim to have done so in their brief. In any event, Respondents declined to participate in the hearing – including to appear and present arguments about whether Nordic is a small business, the financial implications or any penalties, or similar issues. There is little reason to entertain an eleventh-hour argument on this point.

* * *

Accordingly, based on my review of the RDO and entire record, I affirm the findings of liability in the RDO, I vacate and remand for reconsideration the civil monetary penalty, and modify the recommended period of the denial order to a period of 15 years.

Accordingly, it is therefore ordered:

First, the findings of liability are affirmed against the Respondents.

[16] *See* Pub. L. No. 104-121 (1996) (codified at various sections of the U.S. Code).

Second, the civil monetary penalty is vacated and remanded for additional consideration as discussed above.

Third, for a period of 15 years from the date of this Order, Nordic Marine Pte, Ltd., with the last known address of 3 HarbourFront Place, #04-03 HarbourFront Tower 2, Singapore 099254, and Morten Innhaug, with a last known address of 16 Keppel Bay Drive #04-20 Caribbean at Keppel Bay, Singapore 098643 and when acting for or on their behalf, their successors, assigns, employees, agents, or representatives (each a "Denied Person" and collectively the "Denied Persons") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or engaging in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

Fourth, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fifth, after notice and opportunity for comment as provided in section 766.23 of the EAR, any person, firm, corporation, or business organization related to a Denied Person or the

Denied Persons by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

Sixth, this Order shall be served on Respondents Nordic Maritime Pte Ltd. and Morten Innhaug and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order shall be published in the **Federal Register**.

The findings of liability and the denial order, which constitute final agency action in this matter, are effective immediately.

Issued this 11th day of March, 2020.

_____

Cordell A. Hull,
Acting Under Secretary of Commerce for
Industry and Security.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matters of: Nordic Maritime Pte. Ltd. and Morten Innhaug Respondent	17-BIS-0004 (consolidated)

CERTIFICATE OF SERVICE

I hereby certify that, on March 11, 2020, I caused the foregoing Partial Remand and Final Denial Order to be served upon:

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Office of the Under Secretary for Industry and Security

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C.

IN THE MATTERS OF:	Docket No.
Nordic Maritime Pte. Ltd.,	17-BIS-0004
and	
Morten Innhaug,	
Respondents.	

RECOMMENDED DECISION AND ORDER

The Bureau of Industry and Security (BIS or Agency) initiated this administrative enforcement action against Nordic Maritime Pte. Ltd. (Respondent Nordic) and Morten Innhaug (Respondent Innhaug) on April 28, 2017. BIS alleges Respondent Nordic committed three violations and Respondent Innhaug committed one violation of the Export Administration Regulations (EAR or Regulations). 15 C.F.R. Parts 730-74 (2012-14). The first three allegations allege Respondent Nordic: 1) illegally reexported certain equipment to Iran; 2) acted with knowledge when it illegally reexported the equipment; and 3) made false and misleading statements during the BIS investigation.[17] The single charge against Respondent Innhaug alleges he aided and abetted Respondent Nordic in violating the regulations.

As set forth below, I find BIS proved the allegations in the charging letters. I recommend Respondents be fined in the amount of $31,425,760.00 dollars. I further

[17] Reexport means to ship an item subject to the EAR from one foreign country to another foreign country. See 15 C.F.R. § 734.14.

recommend the Under Secretary impose a standard denial order as described below until Respondents repay the fine in full.

BACKGROUND

After BIS filed two separate charging letters against Respondents separately, the Chief Administrative Law Judge (CALJ) of the United States Coast Guard (USCG), consolidated 17-BIS-0003 and 17-BIS-0004. See 5 U.S.C. § 3344 and 5 C.F.R. § 930.208. Thereafter, the CALJ set deadlines for discovery and motion practice, as well as establishing a hearing date.

On February 2, 2018, the CALJ issued an order partially granting BIS' Motion for Summary Decision. See Docket Entry 42. The February 2, 2018 Order agreed there were no material issues of fact whether Respondents committed the allegations in the charging letters but did not, however, address the appropriate sanction to levy against Respondents for the proved violations. Noting a lack of sufficient briefing on the issue, the CALJ set a sanction hearing to commence on February 6, 2018, in Baltimore, Maryland.

After the hearing on February 6, 2018, but before the CALJ issued a sanction decision, the United States Supreme Court decided Lucia v. S.E.C., on June 21, 2018. 138 S. Ct. 2044 (2018). Lucia declared SEC ALJs "Officers of the United States" and required an appointment in accordance with the Appointments Clause in Art. II, § 2, cl. 2 of the U.S. Constitution. Ultimately, the Court concluded SEC ALJs were not properly appointed, and agreed the SEC respondents were entitled to a new "hearing" before a new, properly appointed ALJ on remand. Lucia, 138 S. Ct. at 2055.

Relying on Lucia, Respondents filed motions attacking USCG ALJ appointments. Agreeing with Respondents in part, the CALJ issued an Order on October 19, 2018, recognizing he was similarly situated to SEC ALJs. The CALJ acknowledged he was not properly appointed under the Appointments Clause when he issued the order granting partial summary decision and when he presided over the sanction hearing in this matter. Accordingly, the CALJ reassigned this matter to the undersigned ALJ per the Supreme Court's discussion in Lucia. 138 S. Ct. at 2055 (discussing reassignment to a constitutionally appointed ALJ as the proper recourse).

Upon reassignment, and after reviewing Respondents' pending motions and BIS' oppositions, the undersigned ALJ held a telephone conference on November 8, 2018. During the conference, the parties agreed this matter should be reset for a hearing and that CALJ's order partially granting summary decision did not effectively dispose of the allegations in the charging letters because of his improper appointment at the time he issued the decision. However, the parties disagreed on the need for additional discovery and/or more time to file additional motions in this matter. The undersigned directed the parties to file legal memoranda addressing the need for further discovery; both parties complied on December 3, 2018.

Before the undersigned had the opportunity to decide the pending motions, the United States Department of Homeland Security, the parent department of the USCG, experienced a lapse in appropriations beginning on December 22, 2018. The funding lapse persisted until January 25, 2019, during which time the court's staff was not permitted to report for duty.

After the government shutdown, the undersigned issued an Order on February 1, 2019, granting Respondents' request to partially reopen discovery. The February 1, 2019 Order noted Respondents' well-reasoned argument that new discovery should be permitted because Respondents' ability to pay any levied sanction (if one is imposed) might have changed since the original discovery exchange in 2017. However, the undersigned did not grant unfettered discovery; the parties were only permitted to update already existing discovery responses or conduct additional discovery that did not already exist. See February 1, 2019 Order.

On April 12, 2019, Respondents provided BIS with updated responses to a request for production of documents, which BIS propounded in 2017. In its updated production, Respondents provided BIS with one page concerning Respondent Innhaug's ability to pay a civil penalty and two pages of documents concerning Respondent Nordic's ability to pay a civil penalty.

BIS filed a Motion in Limine on April 26, 2019, arguing Respondents' updated production was insufficient. Respondents did not file a timely response to BIS' April 26, 2019 motion, and did not timely seek permission from the undersigned for additional time to file a response. BIS also filed a Motion for Summary Judgment on May 8, 2019.

The undersigned issued two notable orders on May 22, 2019, and May 24, 2019, in response to BIS' motions. The May 22, 2019 Order instructed Respondents to produce all documents responsive to BIS' Request for Production 5, 6, and 7, and noted that if Respondents failed to comply, the undersigned may grant BIS' request to prevent Respondents from asserting an inability to pay argument at the hearing. In the May 24,

2019 Order, the court again observed Respondents' obligation to comply with the May 22, 2019 Order, but denied BIS' request to enter summary judgment.

Thereafter, BIS renewed its Motion in Limine on June 4, 2019, asking the undersigned to prevent Respondents from asserting an inability to pay argument because Respondents failed to comply with the discovery orders issued in this case. See May 22, 2019 Order (permitting BIS to renew motion). Respondents filed an opposition to BIS' renewed motion, and filed a notice specifically informing the undersigned ALJ that Respondents would not appear at the June 11, 2019 hearing, and would not permit their attorney of record to appear on their behalf.

On June 11, 2019, the undersigned ALJ convened a hearing in Baltimore, Maryland. Gregory Michelsen, Esq., and Zachary Klein, Esq., appeared on behalf of the BIS. However, in keeping with the June 11, 2019 Notice, neither Respondents nor Respondents' counsel appeared at the hearing.

At the beginning of the hearing, BIS renewed their motion to bar Respondents from raising the inability to pay argument as a result of the discovery violations. The undersigned agreed and granted BIS' motion to bar Respondents from asserting the inability to pay argument. Tr. 12. Thereafter, BIS called three witnesses and offered 17 exhibits, all of which were admitted.

After the hearing, BIS filed a post-hearing brief on August 15, 2019. Respondents filed a post-hearing brief on August 16, 2019, and BIS replied on September 13, 2019. Briefing is closed in this case and this matter is ripe for decision.

PRELIMINARY EVIDENTIARY ISSUES

Before turning to the substance of this case, the undersigned finds it necessary to address the exhibits BIS attached to its post-hearing brief and attachments accompanying Respondents' post-hearing brief. I address each in turn.

a. A. BIS' Exhibits

A review of BIS' brief shows it did not cite to the 17 exhibits entered and numbered at the hearing. Instead, without permission from the ALJ, BIS' brief cites to 27 exhibits. Of the 27 exhibits, some were admitted at the hearing, others were incorporated in the record at various points during this entire litigation, and at least one was created after the hearing. BIS' mixture of these exhibits has the potential to cause great confusion. To remedy the confusion, and to prevent further delay of this matter, all exhibits referenced throughout this decision correspond to the exhibit list cited in BIS' post-hearing brief.

In addition to the citation issue, some of the exhibits cited by BIS in the post-hearing brief raise the question of admissibility. For example, BIS relies on testimony taken during the February 6, 2018 hearing before CALJ Brudzinski. This was in error. As discussed above, CALJ Brudzinski lacked authority to convene the hearing on February 6, 2018, and similarly lacked authority to place any witnesses under oath, because he was not authorized to exercise the powers of an inferior officer at the time. Since he lacked authority to place witnesses under oath or convene the hearing, any testimony before CALJ Brudzinski should not be considered. To hold otherwise would sidestep Lucia's instruction to grant a respondent a new hearing where an ill-appointed ALJ has presided before. Indeed, it would be an odd outcome to allow a respondent to

have a new hearing because the first ALJ was wrongfully appointed, but allow all the testimony presented to that same ALJ as evidence in a second hearing. Accordingly, the undersigned will strike Exhibit 5 and will not consider the February 6, 2018 transcript in this case.

With regard to Exhibit 8, which is the transcript of the proceedings on June 11, 2019, the undersigned finds it a bootless errand and a waste of resources to attach the hearing transcript as an exhibit. The undersigned's July 11, 2019 Order serving the transcript on the parties made the document a part of the record. As a matter of housekeeping, by attaching it as an exhibit, BIS clutters the record and creates redundant copies of identical documents for no reason. Accordingly, Exhibit 8 is stricken; however, the undersigned will rely on the substance of the transcript, cited as Tr. at __.

Lastly, there is the issue of an affidavit signed by BIS' counsel. A review of Exhibit No. 27 shows it is a sworn statement created on August 15, 2019, well after the hearing in this case. BIS attached this exhibit without permission of the ALJ. Given the timing of its creation, and the fact that BIS seeks to add evidence into the record without any regard for the ALJ as the evidentiary gatekeeper in this case, I am striking Exhibit 27, and will not rely on it in this decision.

b. B. Respondents' Attachments

A review of Respondents' post-hearing brief shows Attachments 1 and 2 are documents which purportedly support the argument concerning Respondents' inability to pay a sanction if one is imposed in this case. Without belaboring this issue, the undersigned will strike both attachments. A review of the hearing transcript in this case shows the undersigned granted BIS' motion to prevent Respondents from raising an

inability to pay argument during these proceedings because of Respondents' discovery violations, i.e., failure to comply with the May 22, and 24, 2019 Orders. Tr. at 12.[18]

Having disposed of these evidentiary issues, the undersigned turns to the case at bar.

RECOMMENDED FINDINGS OF FACT

Upon review of the file, the undersigned finds the following facts proved by preponderant evidence:

1. On or about July 12, 2011, Reflect Geophysical obtained a license from BIS covering certain seismic survey equipment, including compass birds and streamer sections (survey equipment). Ex. 7.
2. At some point after Reflect Geophysical obtained the license, Respondent Nordic came into possession of the survey equipment. Ex. 14.
3. Respondent Nordic is a company located in Singapore, and at all times relevant to this case, Morten Innhaug was the Chairman and majority shareholder of Nordic Maritime Pte. Ltd. Ex. 3.
4. On or about April 11, 2012, Reflect Geophysical provided Respondent Nordic with a cease and desist letter, warning the equipment's use in Iranian waters would violate the license BIS granted Reflect Geophysical. The letter also demanded Respondent Nordic return the equipment until resolution of the dispute. Ex. 14; Tr. at 71.

[18]BIS also asked the undersigned to find, as a result of the discovery violation, that Respondent Innhaug allegedly received 90 percent of a $22.8 million distribution. Tr. at 14. The undersigned finds it unnecessary to make such a finding because Respondents' ability to pay is no longer a question in this case since I prohibited Respondents from raising the issue as a mitigating factor.

5. On April 17, 2012, Reflect Geophysical informed BIS Respondent Nordic might use the survey equipment to explore oil and gas in Iran, in violation of U.S. law and regulation. Ex. 11.
6. In June 2012, after the cease and desist letter, Reflect Geophysical leased the survey equipment to Respondent Nordic pursuant to a written agreement, which included a retroactive commence date of April 2012. Ex. 16.
7. Although Respondents had a lease to use the survey equipment, Respondents never obtained any licenses from BIS for possession, use, or reexport of the leased survey equipment. Ex. 4.
8. On or about May 1, 2012, through and including April 4, 2013, Respondent Nordic transported the survey equipment to the Forouz B natural gas field and used it to conduct seismic surveys. Ex. 4.
9. The Forouz B natural gas field is within Iranian territorial waters. Ex. 4.
10. Respondent Nordic transported the survey equipment to the Forouz B natural gas field aboard the M/V ORIENT EXPLORER, a vessel it leased/chartered from a Russian state-owned company, DMNG, via a charter party signed by Respondent Innhaug. Ex. 4.
11. Respondent Nordic conducted the seismic survey of the Forouz B natural gas field pursuant to an €11.8 million euro contract it had with Mapna International FZE (Mapna), using the survey equipment at issue in this case. Ex. 4; Ex. 13; Tr. at 15.
12. Mapna has significant ties to Iran. Tr. at 64.

13. Respondents neither sought nor obtained authorization from either BIS or the Department of Treasury's Office of Foreign Assets Control (OFAC) to reexport the survey equipment at issue to the Forouz B natural gas field in Iran. Ex. 6.
14. Respondents were aware the survey equipment would be used to conduct a seismic survey at the Forouz B natural gas field in Iran. Ex. 4.
15. Respondents were on notice that U.S. government authorization was required to reexport the survey equipment to Iran, including the territorial waters of Iran. Ex. 14; Tr. at 71-72.
16. On April 15, 2014, Respondent Nordic, through its Chief Executive Officer, Kjell Goran Gauksheim, provided BIS a written submission falsely stating that Reflect Geophysical: 1) never advised Respondent Nordic that the survey equipment was subject to a BIS export license; 2) never communicated any BIS export license conditions controlling the survey equipment; and 3) never provided a copy of the BIS license (granted to Geophysical) to Respondents. Tr. at 66; Ex. 4.

DISCUSSION

c. A. Jurisdiction

At the time of the alleged offenses, BIS had jurisdiction over this matter pursuant to the Export Administration Act of 1979 (EAA), 50 U.S.C. §§ 4601-4623, specifically the regulations promulgated under that Act. See 15 C.F.R. § 730-774. Although the EAA of 1979 had lapsed at the time, the President of the United States was authorized to enforce the regulations promulgated under the EAA of 1979 pursuant to the International Emergency Economic Powers Act (IEEPA). 50 U.S.C. § 1701, et seq.

In August 2018, Congress passed the Export Control Reform Act of 2018 and repealed much of the EAA. Under the 2018 Act, Congress provided BIS with permanent statutory authority to administer the export regulations. 50 U.S.C. § 4826 (EAR in effect on August 13, 2018, shall continue in effect). The 2018 Act specifically notes that all administrative actions made or administrative proceedings commenced are not disturbed by the new legislation. See 50 U.S.C. § 4826. Accordingly, BIS has jurisdiction over this matter, as it did at the time of the offenses in question.

d. B. Burden of Proof

As set forth in prior BIS Decisions and Orders, BIS must prove the allegations in the charging letter by reliable, probative, and substantial evidence. In the Matter of Ihsan Medhat Elashi, 71 Fed. Reg. 38843, 38847 (July 10, 2006) citing 5 U.S.C. 556(d). In Elashi, the ALJ acknowledged the Supreme Court's traditional "preponderance of the evidence" standard of proof applies to BIS proceedings. Id. citing Dir., Office of Workers' Comp. Programs v. Greenwich Collieries, 512 U.S. 267, 290 (1994) (the preponderance of the evidence . . . applies in adjudications under the Administrative Procedure Act) (citing Steadman v. S.E.C., 450 U.S. 91 (1981)).

Ultimately, to prevail, BIS must establish that it is more likely than not the Respondents committed the violations alleged in the charging letters. See Herman & Maclean v. Huddleston, 459 U.S. 375, 390 (1983). In other words, the agency must demonstrate "that the existence of a fact is more probable than its nonexistence." Concrete Pipe & Products v. Construction Laborers Pension Trust, 508 U.S. 602, 622 (1993). To satisfy the burden of proof, BIS may rely on direct and/or circumstantial evidence. See generally Monsanto Co. v. Spray-Rite Servo Corp., 465 U.S. 752, 764-765

(1984); In the Matter of BiB and Malte Mangelsen, 71 Fed. Reg. 37042, 37047 (June 29, 2006).

With this burden in mind, the undersigned turns to the charges in this matter.

e. C. Charging Letters

The charging letters in this case allege separate violations against Respondent Nordic and Respondent Innhaug. A review of the charges shows they are not in logical order and difficult to follow. As noted by BIS' brief, the charges are more easily analyzed out of order because Charge 2 relates to the underlying action and forms the basis of the other charges. Accordingly, I will address Charge 2 first, followed by Charge 1 and Charge 3 against Respondent Nordic, and finally address Charge 1 against Respondent Innhaug.

1. Charge 2 against Respondent Nordic – Reexporting Equipment to Iran

In Charge 2 of the Nordic Charging Letter, BIS alleges Respondent Nordic violated section 764.2(a) by reexporting U.S.-origin survey equipment to Iran without the required license. Respondent Nordic admits it reexported the survey equipment without a license, but denies it had knowledge that reexporting to Iranian waters violated the license requirement. See Answer, Ex. 6. As set forth below, I find BIS proved by preponderant evidence Respondent Nordic violated 15 C.F.R. § 764.2(a) by reexporting the survey equipment at issue in this case.

As a general, overarching rule, 15 C.F.R. § 764.2(a) prohibits all violations of the EAR. Violations of 15 C.F.R. § 764.2(a) are strict liability offenses, and BIS need not show a violator intentionally, knowingly committed the violations. See In the Matter of Wayne LaFleur, 74 Fed. Reg. 5916, 5918 (February 3, 2009).

In 2012-2013, at the time of the alleged offense, the EAR strictly prohibited reexports of certain equipment identified on the Commerce Control List (CCL). 15 C.F.R. Supp. No. 1 to Part 774. However, the EAR did not close the door to all reexportation of CCL items; instead, it permitted an individual to request a license from the U.S. government, which would allow the reexport. 15 C.F.R. §§ 742.4, 742.8, and 746.7 (2012-2013). But reexporting any of the items on the CCL without the appropriate license, constitutes an EAR violation under 15 C.F.R. § 764.2(a) and non-compliance with 15 C.F.R. §§ 742.4, 742.8, 746.7 and 15 C.F.R. Supp. No. 1 to Part 774.

A review of the CCL shows the survey equipment at issue here was clearly classified under Export Control Classification Number (ECCN) 6A001; neither party contests this point. 15 C.F.R. Supp. No. 1 to Part 774. Similarly, the parties agree Respondent Nordic possessed the survey equipment without a license and that Respondent Nordic reexported the equipment for use in Iranian waters onboard the M/V ORIENT EXPLORER. Exs. 4; 6; 9; 11. Exhibit 6 shows Respondent Nordic admitted to using the survey equipment in Iranian waters.

There can be only one conclusion under the facts of this case, by taking the equipment into Iranian waters and conducting a seismic survey without a license, Respondent Nordic violated 15 C.F.R. § 764.2(a) by engaging in conduct prohibited by 15 C.F.R. §§ 742.4, 742.8, 746.7 and 15 C.F.R. Supp. No. 1 to Part 774.

Respondent Nordic's argument that it did not know of the licensure requirement is unpersuasive. As noted above, it is irrelevant whether a violator knows a license is required because these types of violations are strict liability offenses. Ergo, Respondent

Nordic's lack of regulatory knowledge is not a defense to this specific charge. In the Matter of Wayne LaFleur, 74 Fed. Reg. 5916, 5918 (February 3, 2009).

2. Respondent Nordic Charge 1 – Acting with Knowledge of EAR Violation

Unlike Charge 2, Charge 1 alleges Respondent Nordic not only reexported the survey equipment, but did so with knowledge that the reexport would violate the regulations and licensure requirements. See 15 C.F.R. § 764(e) (emphasis added). As noted above, Respondent Nordic acknowledges it reexported the survey equipment, but insists it did so without knowledge of the EAR violations.

Pursuant to 15 C.F.R. § 764.2(e), no person may act with knowledge they are undertaking an action in violation of the EAR. The regulations define knowledge as:

> not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and is also inferred from a person's willful avoidance of facts.

15 C.F.R. § 772.1. Thus, where BIS alleges a section 764.2(e) violation, BIS must prove 1) the person violated the regulations; and 2) the violator did so with scienter—knowledge. A lack of knowledge would be a defense under this charge.

As set forth above, the parties do not dispute whether Respondent Nordic violated the EAR when it reexported the survey equipment to Iranian waters. Thus, the record proves the first element of a section 764.2(e) violation.

With regard to the second element, the record shows Respondent Nordic had the requisite knowledge when it violated the regulations. Specifically, Respondent Nordic acknowledges in April 2012, Reflect Geophysical straightaway warned Respondent Nordic by a cease and desist letter that use of the survey equipment in Iranian waters

would violate the license BIS granted. Ex. 14. And while it may seem odd that Reflect Geophysical subsequently leased the equipment to Respondent Nordic in June 2012, the record shows Reflect Geophysical provided Respondent Nordic with a copy of the license granted by BIS as part of the June 2012 lease. The license attached to the lease specifically identifies countries wherein the equipment may be used, and Iran is noticeably absent. Ex. 7. Thus, Respondent Nordic had two clear notices informing it of the clear illegality of using the survey equipment in Iranian waters and chose, on both instances, to ignore the warnings.

The evidence is conclusive. Respondent Nordic had actual specific knowledge that use of the equipment in Iranian waters would run awry of U.S. law and regulations. Accordingly, I find BIS proved Respondent Nordic violated 15 C.F.R. § 764(e), by knowingly violating 15 C.F.R. § 764.2(a), 15 C.F.R. §§ 742.4, 742.8, 746.7 and 15 C.F.R. Supp. No. 1 to Part 774.

Even assuming, arguendo, Respondent Nordic did not have actual specific knowledge that it was violating the EAR, Respondent Nordic did have an awareness of a high probability that BIS restrictions applied to use of the equipment in Iranian waters, and that the use would be a regulatory violation. 15 C.F.R. § 772.1 The record shows not only did Respondent Nordic receive a cease and desist letter, but Respondent Nordic and Reflect Geophysical had an ongoing dispute about the equipment's use. A review of the April 14, 2012 cease and desist letter shows Respondent Nordic had a history of conflict with Reflect Geophysical, as expressed in Paragraph 5 which reads:

> For the foregoing reasons we **HEREBY DEMAND** that . . . Nordic take steps to have the Vessel returned to Singapore so that Equipment may be offloaded and stored at mutually acceptable location, as previously suggested in our letters 7 and 21 March 2012 pending the resolution of this dispute. . . .

Ex. 14 (emphasis in original). It bears repeating, after sending the cease and desist letter, Reflect Geophysical again provided Respondent Nordic with clear information concerning the illegality of the survey equipment's use in the June 2012 lease. And although it may seem highly irresponsible for Reflect Geophysical to subsequently lease the equipment to Respondent Nordic in June 2012, the fact remains the lease included a copy of the BIS license describing restrictions applicable to the equipment. This license makes very clear the countries in which the equipment may be reexported, and Iran is not on the list.

These communications between Respondent Nordic and Reflect Geophysical are telling and lead to the conclusion that the parties discussed use of the equipment in Iranian waters. To this end, it is far more likely than not that Respondent Nordic simply ignored all warnings against use of the equipment in Iranian waters and proceeded with a knowing disregard for the restrictions.

Upon review of the record, and applying the EAR to the case at hand, preponderant evidence shows Respondent Nordic possessed the requisite knowledge contemplated under 15 C.F.R § 764.2(e) when it violated the EAR. BIS supplied ample evidence proving Respondent Nordic knew reexportation of the survey equipment into Iranian waters was a violation of the regulations.

3. Respondent Nordic Charge 3 – Making False and Misleading Statements

In Charge 3, BIS alleges Respondent Nordic made false and misleading statements while BIS investigated the use of the survey equipment in this case. See 15 C.F.R. § 764.2(g). The record shows BIS proved Charge 3.

Title 15 C.F.R. § 764.2(g) prohibits misrepresentation and concealment of facts, and provides in pertinent part:

> (1) No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS, the United States Customs Service, or an official of any other United States agency, or indirectly through any other person:
>
> > (i) In the course of an investigation or other action subject to the EAR . . . .

Where a corporation is involved, an officer or employee constitute the acts of the corporation. See U.S. v. Sain, 141 F.3d 463 (3d Cir. 1998); S.E.C. v. Koenig, 2007 WL 1074901 *6 (N.D. Ill. Apr. 5, 2007).

Applying section 764.2(g) here, BIS must prove 1) BIS was conducting an ongoing investigation; and 2) during the investigation, Respondent Nordic made the false or misleading statements.

A review of the record shows BIS opened an investigation after receiving Reflect Geophysical's April 17, 2012 letter expressing concern that Respondent Nordic might use the survey equipment in Iranian waters. Tr. at 38. Moreover, Respondent Nordic's April 15, 2014 letter to BIS shows Respondent Nordic's awareness of the ongoing BIS investigation, inasmuch as the letter cites "potential non-compliance" and an interview with Special Agent Payton from the Office of Export Enforcement's (OEE) Houston, Texas office. Ex. 4. Accordingly, BIS proved at some time between April 17, 2012, and April 15, 2014, BIS opened an investigation concerning the use of the survey equipment.

The April 15, 2014 letter is also the source of BIS' theory that Respondent Nordic made false and/or misleading representations to BIS during the investigation.

Specifically, the April 15, 2014 letter from Respondent Nordic's CEO,[19] accuses Reflect Geophysical of: 1) never advising Respondent Nordic that the survey equipment was subject to a BIS export license; 2) never communicating any BIS export license conditions controlling the survey equipment; and 3) never providing a copy of the BIS license (granted to Geophysical) to Respondent Nordic. Ex. 4; Tr. at 66. None of these statements were true.

As noted above, the evidence shows Respondent Nordic received the cease and desist letter in April 2012, directly referencing the BIS license and the restrictions on the equipment's use in Iranian waters. Second, the June 2012 lease agreement included a copy of the license which expressly stated the conditions controlling the survey equipment. These two documents prove it is more probable than not Respondent Nordic, through its CEO, misled BIS or made false misrepresentations to BIS during the course of an investigation when it sent the April 15, 2014 letter to BIS. Accordingly, I find BIS proved Charge 3 against Respondent Nordic.

4. Respondent Innhaug Charge 1 – Causing, Aiding, and Abetting Any Act Prohibited by the EAR

In Charge 1, BIS makes a separate allegation against Respondent Innhaug, and alleges he caused, aided, or abetted Respondent Nordic to reexport maritime surveying equipment into Iranian waters. Pursuant to BIS case precedent and the applicable regulations, I find BIS proved Charge 1 against Respondent Innhaug.

Title 15 C.F.R. § 764.2(b) provides: no person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of

[19] Courts roundly recognize that a corporate officer's conduct constitute acts of the corporation itself. See S.E.C. Koenig, 2007 WL 1074901 noting that a corporation's agent's action can constitute proof of a corporation's violation.

any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder. Where a corporation is involved, an officer or employee can be charged with aiding and/or abetting the corporation's underlying violations. See U.S. v. Sain, 141 F.3d 463 (3d Cir. 1998); S.E.C. v. Koenig, 2007 WL 1074901 *6 (N.D. Ill. Apr. 5, 2007). As explained in Koenig, an agent's actions can constitute both proof of a company's primary violations and proof of the agent's aiding and abetting violations. BIS case precedent also shows under the EAR, a corporate officer can be held liable for the acts committed in helping the corporation violate the EAR. In In the Matters of: Trilogy International Assoc., Inc., and William Michael Johnson, the Under Secretary agreed that an agent who 1) directs and controls operations of a corporation; and 2) takes one or more specific actions in connection with an EAR violation, may be held liable for underlying violations committed by the company. 15-BIS-0005 (2018).

Here, BIS claims Respondent Innhaug, as the Chairman and majority shareholder, caused, aided, and abetted Respondent Nordic's unlicensed reexports of the survey equipment into Iranian waters. Having already determined Respondent Nordic reexported the survey equipment into Iranian waters in violation of the EAR, the only question remaining is whether Respondent Innhaug aided and abetted in this conduct.

In this case, the primary evidence against Respondent Innhaug comes from the time charter party[20] entered into on or about April 1, 2012. Ex. 12. The time charter party bears Respondent Innhaug's and a DMNG representative's signature. The essence of the agreement is for worldwide use of the M/V ORIENT EXPLORER, which, as the

[20] A time charter party is a maritime contract for use of a vessel for a certain period of time. See Interocean Shipping Co. v. M/V LYGARIA, 512 F. Supp. 960, 967 (D. Md. 1981) (noting "[a] time charter party is simply an agreement between a vessel owner and a charterer that the latter may use the vessel's cargo carrying capacity to transport unspecified cargos for a fixed period of time.")

evidence shows, was the vessel used to reexport the survey equipment into Iranian waters. Indeed, securing the vessel to carry the equipment to Iranian waters was an integral part of the ultimate violation. Therefore, it goes without saying that the agreement was essential to reexporting the equipment to Iran in violation of the EARs.[21]

Moreover, the record shows the April 11, 2012 cease and desist letter was addressed to and at the attention of Respondent Innhaug, and Respondent Innhaug admitted to receiving the letter. Ex. 14; Ex 15. Respondent Innhaug also admitted, through the course of discovery, to reviewing the April 15, 2014 submission to BIS, wherein Respondent Nordic, through the signature of another officer, made the three false, misleading statements set forth in Charge 3, discussed above. Ex. 9 at para. 33-35.

Accordingly, I find Respondent Innhaug aided and abetted Respondent Nordic in the abovementioned EAR violations and therefore violated 15 C.F.R. § 764.2(b).

RECOMMENDED SANCTION

Having determined Respondents committed the abovementioned violations, I now turn to the appropriate sanction to recommend in this case. Section 764.3 of the EAR permits the undersigned to recommend: (1) a civil penalty, (2) a denial of export privileges under the regulations, and (3) an exclusion from practice. See 15 C.F.R. § 764.3. Pursuant to 50 U.S.C. § 1705, which was in effect at the time of the offense, the undersigned may impose a civil penalty in an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

[21] The undersigned observes that Respondent Innhaug's entrance into the time charter party agreement appears to be well before the cease and desist letter was sent to Respondent Innhaug. However, as noted above, knowledge is not an element under Charge 2. Therefore, Respondent Innhaug may have unknowingly aided and abetted his company in violating the EAR in April 2012 by entering into the charter party, which he knew was for use in Iranian waters under the Mapna agreement.

Additionally, Supplement No. 1 to 15 C.F.R. Part 766 is instructive in that it provides guidance to BIS on how to make penalty determinations during administrative enforcement "settlement" cases.[22] Even though this case is not a settlement, the information contained in Supplement No. 1 can assist in determining the appropriate sanction.

Supplement No. 1 discusses specific mitigating and aggravating factors. The mitigating factors include:

1. The party self-disclosed the violations (given great weight).
2. The party created an effective export compliance program (given great weight).
3. The violations resulted from a good-faith misinterpretation.
4. The export would likely have been granted upon request.
5. The party does not have a history of past export violations.
6. The party cooperated to an exceptional degree during the investigation.
7. The party provided substantial assistance in the BIS investigation.
8. The violation did not involve harm of the nature the regulations were intended to protect.
9. The party had little export experience and was not familiar with the requirement.

15 C.F.R. Part 766, Supp No. 1, at § III(B)

The eight aggravating factors include:

1. The party deliberately hid the violations (given great weight).
2. The party seriously disregarded export responsibilities (given great weight).
3. The violation was significant in view of the sensitivity of the item or destination (given great weight).
4. The violation was likely to involve harm of the nature the regulations intended to protect.
5. The value of the exports was high, resulting in a need to serve an adequate penalty for deterrence.
6. Other violations of law and regulations occurred.
7. The party has a history of past export violations.
8. The party lacked a systematic export compliance effort.

[22] Several updates have been made to Supplement No. 1 of 15 C.F.R. Part 766. As the last violation charged ended in 2014, we are using the January 29, 2014 to July 21, 2016 version of Supplement No. 1. The earlier version of Supplement No. 1 (June 4, 2010 to January 28, 2014) used the same aggravating/mitigating factors.

Id. I address each in turn.

f. A. Mitigating Factors

1. The party self-disclosed the violations (given great weight).

The record shows Respondent Nordic did provide a self-disclosure on April 15, 2014. From the broadest perspective, Respondent Nordic should be applauded for doing so. However, as discussed above, the disclosure contained blatant falsehoods that Respondents knew, or should have known about. Indeed, this disclosure forms the basis of Charge 3, where BIS proved Respondent Nordic made false and misleading statements.

Accordingly, although this is typically a mitigating factor, the undersigned finds any mitigation normally attributed to self-disclosure is nullified by the unique facts of this case.

2. The party created an effective export compliance program (given great weight).

There is some evidence in the record showing Respondents created an export compliance program as a result of the abovementioned incident. Ex. 4. Respondents' April 15, 2014 self-disclosure indicates the company hired outside counsel to address compliance issues, restructured management, and arranged training, among other actions. I find these steps do not rise to an export compliance program that would address the violations in this case. Here, Respondents actions were not the result of a lapse in or the existence of a compliance program, but instead were the result of blatant knowing disregard for U.S. law. To this end, a compliance program, even if put in place, would

have little effect on deliberate, intentional violations, such as misleading BIS and knowingly violating the regulations. To this end, I find this factor not mitigating.

3. The violations resulted from a good-faith misinterpretation.

The record shows Respondents' conduct did not result from a good faith misinterpretation. Although Respondents argued the license issued to Reflect Geophysical was unclear as to how it applied to Iranian waters, the record belies Respondents' argument. Respondents had two opportunities to review the license, first when explained through the cease and desist letter in April 2012, and second, when Reflect Geophysical (despite knowing Respondents, at one time, might use the equipment in violation of the license) provided a copy of the license to Respondents as part of leasing the equipment.

This is not a case of misinterpretation at all; nothing in the license or the cease and desist letter is ambiguous. Both make clear using the survey equipment in Iranian waters would be contrary to U.S. law.

4. The export would likely have been granted upon request.

During the hearing, BIS presented testimony indicating it would not have granted the request to use the equipment in Iranian waters. Tr. at 146-147. Respondents provided no evidence, given their absence at the hearing, and no evidence throughout this proceeding that BIS might have granted their request to reexport the survey equipment to Iranian waters. Accordingly, this factor is not mitigating.

5. The party does not have a history of past export violations.

The record contains no evidence concerning prior export violations. As neither party provided evidence in this regard, it is neither aggravating nor mitigating and given no weight.

6. The party cooperated to an exceptional degree during the investigation.

The record shows Respondents made farcical attempts to cooperate with BIS in this case. Specifically, as noted above, Respondents made a self-disclosure concerning reexport of the survey equipment in this case. However, that disclosure included falsehoods and misrepresentations. Accordingly, it cannot be considered cooperation under the facts of this case and is not mitigating.

7. The party provided substantial assistance in the BIS investigation.

There is no evidence Respondents gave substantial assistance to BIS during its investigation. Accordingly, this factor is not mitigating.

8. The violation did not involve harm of the nature the regulations were intended to protect.

The violation in this case goes to the very heart of the EAR's purpose. As part of our national security, BIS stringently regulates certain equipment which it identifies by regulations and the Federal Register. In 2012-2013, at the time of the alleged offense, the EAR strictly prohibited reexports of certain equipment identified on the CCL, which included the survey equipment at issue in this case. 15 C.F.R. Supp. No. 1 to Part 774. These materials are controlled due to national security concerns, meaning the materials could make a significant contribution to the military potential of certain countries, like Iran. Tr. at 89. Moreover, BIS controls this equipment for anti-terrorism purposes inasmuch as access to this equipment could help a country develop a capacity to either

support an international terrorist group or engage in terrorist activities on their own. Tr. at 89. Seismic surveys find oil and gas, oil and gas make money. Respondents' conduct here could conceivably help fund terrorist groups in Iran, particularly since the evidence shows the contract to conduct the survey was at the behest of Mapna, a company with deep ties to Iran.

In this case, Respondents did exactly what the regulations attempted to prevent, the use of this equipment to survey waters controlled by a U.S. adversary, Iran. Accordingly, this factor is not mitigating.

9. The party had little export experience and was not familiar with the requirement.

The record shows some evidence Respondents were familiar with U.S. export laws. A review of Exhibit 17 shows Respondents had a history of dealing with a similar maritime survey equipment license before. To this end, I find Respondents were somewhat familiar with U.S. regulations on the issue, and therefore this factor is not mitigating.

g. B. Aggravating Factors

1. The party deliberately hid the violations (given great weight).

As discussed above in Charge 3, the record contains evidence proving Respondents misled BIS investigators by making false statements concerning their receipt of the survey equipment lease and their understanding of how use of the survey equipment in Iranian waters might violate U.S. law. Inherently, Charge 3 could be construed as "deliberately hiding" evidence of the violation. Failing to admit they received a copy of the lease, and/or that they knew of the Iranian restrictions could easily be described as "hiding the truth." However, aside from the misleading statements in the

self-disclosure, there does not appear to be any other evidence that Respondents hid any information from BIS. Accordingly, this factor is not aggravating outside of the inherent offense outlined in Charge 3.

2. The party seriously disregarded export responsibilities (given great weight).

This case is the quintessential example of disregarding export responsibilities. Given the documentary evidence Respondents were provided with, the advanced notice of their potential violation in the April 2012 cease and desist letter, and the fact they received a copy of the license restricting the survey equipment's use, the undersigned is compelled to find Respondents egregiously disregarded their export responsibilities. The facts concerning this aggravating factor are substantial and given great weight.

3. The violation was significant in view of the sensitivity of the item or destination.

I find this factor not applicable and therefore given no weight.

4. The violation was likely to involve harm of the nature the regulations intended to protect.

The nature of the regulations here intend to control the survey equipment and prevent its use by U.S. adversaries. Here, the record shows Respondents not only used the equipment in Iranian waters, a notorious U.S. adversary, but also shows that they did so pursuant to a contract entered into with Mapna, a company with ties to Iran. Tr. at 64. Accordingly, Respondents' actions committed the very evil the U.S. regulations hoped to prevent. This factor is aggravating.

5. The value of the exports was high, resulting in a need to serve an adequate penalty for deterrence.

In this case, the specific value of the equipment exported to Iranian waters is not relevant; however, the value of the survey equipment's use to survey oil and gas in Iranian waters is. In fact, the evidence in this case shows Respondents use of the equipment resulted from a lucrative contract between Respondent Nordic and Mapna, to the tune of €11.8 million euros. Ex. 13. Respondents knew their use of the equipment would lead to consequences, but given the value of the Mapna contract, they found 11.8 million reasons to ignore U.S. law. To this end, the undersigned can only conclude lucre, cupidity, and avariciousness propelled Respondents' conduct.

Because Respondents' illegal use of the equipment led to such a profitable contract, the penalty should be such that it dissuades further violations of this sort, and act as a strong deterrent against this type of behavior. This factor is aggravating.

6. Other violations of law and regulations occurred.

The record contains no evidence of other violations of law, other than those discussed above. But given Respondents' conduct involves not only a knowing violation, but a violation resulting from misleading BIS, I conclude this factor is aggravating.

Upon reviewing all the factors in this case, and considering the record as a whole, I find a sanction in the amount of €23.6 million euros is appropriate. This amount is commensurate to two times the value of the contract Respondents had with Mapna. This sanction is appropriate not only because it is commensurate with the offense given Respondents' assistance to a U.S. adversary, but it also serves to deter future conduct by Respondents and others.[23]

[23] The aggravating factors in 7 and 8 are discussed in the mitigating factors 2 and 5 above.

Ultimately, any company presented with a contract requiring the company to violate U.S. law, should not be able to build into the contract the possible penalties resulting from a BIS civil penalty action. Accordingly, the only way to deter companies from building in the civil penalty into the contract's value is to make the penalty so high that the contract to violate U.S. law becomes not only non-profitable, but detrimental. To this end, by fining Respondents double the amount they would have earned in the Mapna contract, BIS is able to dissuade companies from considering contracts requiring the violation of U.S. law as a foreseeable cost factored into the contract's value.

Therefore, Respondents shall be assessed a fine in the amount of €23.6 million euros, or $31,425,760.00 U.S. dollars.[24] The fine is joint and severally imposed on both Respondents.

BIS also asks the undersigned to recommend an order denying Respondents' export privileges for fifteen years. I believe a denial order set to a fixed period of time is inappropriate for this case. Instead, the undersigned recommends the Under Secretary deny Respondents' export privileges until the fine set forth above is paid in full. By doing so, the Under Secretary encourages prompt payment of the fine and provides Respondents with an ability to show rehabilitation.

VI. RECOMMENDED ORDER

IT IS HEREBY RECOMMENDED, **RESPONDENTS** shall jointly and severally be liable to pay a civil penalty in the amount of $31,425,760.00 U.S. dollars.

[24] BIS asks the undersigned to impose a fine of 11.8 million euros, and asks the undersigned to convert that amount to U.S. dollars based on the exchange rate on May 1, 2012—the date which Respondent Nordic began conducting the survey in Iran. I find the more appropriate conversion date to be March 2012, the date which Respondent Nordic entered into a contract with Mapna. Ex. 13. However, because the Mapna contract does not have a specific day, the undersigned will use March 1, 2012, as the date for conversion. See https://markets.businessinsider.com/currency-converter/euro_united-states-dollar.

IT IS FURTHER RECOMMENDED, a denial of U.S. export privileges shall persist against **Respondents Nordic Maritime Pte. Ltd.**, 3 HarbourFront Place, #04-03 HarbourFront Tower 2, Singapore 099254 and **Morten Innhaug,** 16 Keppel Bay Drive, #04-20 Caribbean at Keppel Bay, Singapore 098643 until the fine in this case is satisfied in full. In accordance with 15 C.F.R. Supplement No. 1 to Part 764, the recommended terms of the export privileges denial against Respondents Nordic Maritime Pte. Ltd., 3 HarbourFront Place, #04-03 HarbourFront Tower 2, Singapore 099254 and Morten Innhaug, 16 Keppel Bay Drive, #04-20 Caribbean at Keppel Bay, Singapore 098643, is as follows:

FIRST, that until the abovementioned fine is paid, Respondents Nordic Maritime Pte. Ltd., 3 HarbourFront Place, #04-03 HarbourFront Tower 2, Singapore 099254 and Morten Innhaug, 16 Keppel Bay Drive, #04-20 Caribbean at Keppel Bay, Singapore 098643, and all of their successors or assigns, when acting for or on behalf of them, their agents, and employees, and their successors or assigns (Denied Persons) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported

from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export or re-export to or on behalf of the Denied Persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that after notice and opportunity to oppose such action as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

This Recommended Decision and Order is being referred to the Under Secretary for review and final action by overnight carrier as provided under 15 C.F.R. § 766.17(b)(2). Due to the short period of time for review by the Under Secretary, all papers filed with the Under Secretary in response to this Recommended Decision and Order must be sent by personal delivery, facsimile, express mail, or other overnight carrier as provided in 15 C.F.R. § 766.22(a).

Submissions by the parties must be filed with the Office of the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Room H-3898, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, within twelve (12) days from the date of issuance of this Recommended Decision and Order. Thereafter, the parties have eight (8) days from receipt of any responses in which to submit replies. See 15 C.F.R. § 766.22(b).

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order, affirming, modifying, or vacating the Recommended Decision and Order. See 15 C.F.R. § 766.22(c).

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary for review and final action for the Agency, as provided in 15 C.F.R. § 766.22.

Done and dated February 7, 2020, at Galveston, Texas.

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Dean C. Metry,
Administrative Law Judge,
United States Coast Guard.

Certificate of Service

I hereby certify that I have served the foregoing document as indicated below to the following parties:

Cordell A. Hull
Acting Under Secretary of Commerce for Industry and Security
Bureau of Industry and Security
U.S. Department of Commerce
Room 3896
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Sent by Federal Express

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U.S. Coast Guard
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Done and dated February 7, 2020, at
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Janice M. Emig,
Paralegal Specialist,
United States Coast Guard,
Department of Homeland Security.

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