

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice and the United States Attorney's Office for the Eastern District of Pennsylvania on behalf of the Defense Logistics Agency-Troop Support (collectively the "United States"); Supreme Foodservice GmbH (f/k/a Supreme Foodservice AG), Supreme Group B.V., Supreme Foodservice FZE (the successor corporation to Supreme Foodservice GmbH & Co. KG), Jamal Ahli Foods Co., LLC, and Stephen Orenstein (collectively "Supreme"); and relator Michael Epp (Epp or "Relator"), through their authorized representatives. Hereafter, the United States, Supreme and Epp are collectively referred to as the "Parties."

RECITALS

A. Supreme Foodservice GmbH (f/k/a Supreme Foodservice AG) specializes in developing and operating supply chains and related services. In July 2005, the Defense Logistics Agency-Troop Support ("DLA") (f/k/a Defense Supply Center Philadelphia ("DSCP")) awarded Supreme Foodservice GmbH the Subsistence Prime Vendor Contract, SPM300-05-D-3130 ("Prime Vendor Contract"), to provide full-service food and non-food distribution support in Afghanistan and specifically for customers listed in the Prime Vendor Contract, as amended.

B. On March 16, 2010, Relator filed a *qui tam* action in the United States District Court for the Eastern District of Pennsylvania captioned *United States ex rel. Michael Epp. v. Supreme Foodservice A.G., Supreme Group B.V., Supreme Foodservice GmbH & Co. KG, Jamal Ahli Foods Co. LLC, Stephen Orenstein and [REDACTED]*, No. 10-CV-1134, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action").

The United States will or has intervened in the Civil Action to effect the Settlement Agreement.

C. On such dates as may be determined by the Court, Supreme Foodservice GmbH will plead guilty to major fraud, conspiracy to commit major fraud, and wire fraud in violation of 18 U.S.C. § 1031, 18 U.S.C. § 371, and 18 U.S.C. § 1343, respectively; and Supreme Foodservice FZE will plead guilty to major fraud in violation of 18 U.S.C. § 1031, pursuant to separate guilty plea agreements (the "Plea Agreements").

D. The United States contends that it has certain civil claims against Supreme for submitting false claims for payment pursuant to the Prime Vendor Contract by means of the following:

1. Falsely representing the invoiced price a related entity, Jamal Ahli Foods Co., LLC ("JAFCO"), charged for the purchase of local market ready ("LMR") items as the "Delivered Price" within the meaning of that term under the Prime Vendor Contract, rather than the lower price invoiced to JAFCO by manufacturers and suppliers of LMR items during the period July 2005 through April 1, 2009;

2. Falsely representing invoiced prices of bottled water as the "Delivered Price" within the meaning of that term under the Prime Vendor Contract, rather than the actual lower priced water invoiced to Supreme from bottled water vendors during the period December 2005 through April 2007; and

3. Obtaining from various vendors located in the United States certain discounts and rebates that it failed to disclose or pass through to DSCP, as required by the Prime Vendor Contract, by falsely characterizing such discounts and rebates as discounts for

prompt payments and marketing allowances when, in fact, some of them were not, during the period June 2005 to December 2010.

The conduct described in Recital Paragraph D shall hereafter be referred to as the "Covered Conduct." As a result of the Covered Conduct, the United States alleges that Supreme knowingly caused false and/or fraudulent claims to be submitted to the United States through the DLA under the Prime Vendor Contract.

E. This Agreement is neither an admission of liability by Supreme nor a concession by the United States that its claims are not well-founded. Supreme expressly denies the allegations of the United States and Relator as set forth herein, and denies it engaged in any wrongful conduct in connection with the Covered Conduct, with the exception of such admissions that are made by certain Supreme entities in connection with the Plea Agreements.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs. Relator also asserts claims for breach of a post-employment contract by Supreme and retaliation in violation of the False Claims Act, 31 U.S.C. § 3730(h).

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. No later than 5 (five) days after the Effective Date of this Agreement, Supreme shall pay to the United States \$101,000,000.00 (One Hundred One Million Dollars) (the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of Pennsylvania.

2. Conditioned upon the United States receiving the Settlement Amount from Supreme and as soon as feasible after receipt, the United States shall pay \$16,160,000.00 (Sixteen Million One Hundred Sixty Thousand Dollars) to Relator by electronic funds transfer.

3. Within 5 (five) days after the Effective Date of this Agreement, Supreme shall pay to Relator \$300,000.00 (Three Hundred Thousand Dollars) by electronic funds transfer pursuant to written instructions to be provided by his counsel, and shall pay to Relator's counsel \$1,150,000.00 (One Million One Hundred Fifty Thousand Dollars) in full satisfaction of Relator's claim under the False Claims Act for attorney's fees and expenses, also by electronic funds transfer pursuant to written instructions to be provided by counsel.

4. Subject to the exceptions in Paragraph 6 below (concerning excluded claims, counterclaims and affirmative defenses), and conditioned upon Supreme's full payment of the Settlement Amount, the United States releases Supreme, together with its current and former direct and indirect subsidiaries, parent corporations, brother and sister corporations, affiliates, and divisions; and its current and former owners, officers, directors, employees, agents, and shareholders; and the predecessors, successors, transferees, and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Conditioned upon Supreme's full payment of the Settlement Amount (as described in Paragraph 1) and the payments to Relator and his counsel (as described in Paragraph 3), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Supreme, together with its current and former direct and indirect subsidiaries, parent companies,

brother and sister companies, affiliates, and divisions; and its and their respective current and former owners, officers, directors, employees, agents, and shareholders; and the predecessors, successors, transferees, and assigns of any of them from any and all civil monetary claims the Relator has or may have on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, as well as any other claims the Relator has or may have, including but not limited to any and all claims filed in the original and amended complaints in this action, and any other claims, under the law of any nation, including without limitation the United States, Germany, and Dubai.

6. Notwithstanding the releases given in Paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims, counterclaims and affirmative defenses of the United States are specifically reserved and are not released:

- (a) Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- (b) Any criminal liability;
- (c) Except as explicitly stated in the Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- (d) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct, including for the claims and affirmative defenses of the United States set forth in the *Appeal of Supreme Foodservice GmbH, Under Contract No. SPM300-05-D-3130*, ASBCA Nos. 57884, 58666, 59636, 58958, 58959, 58982, 59038, 59391, 59164, 59165, 59615, 59393, 59392, 59636, 59418, 59419, 59487, 59481, 59618, 59619, 59653, 59420, 59676, 59681, 59682, 59683, and any other administrative contract claims with respect to the

Prime Vendor Contract that the United States has asserted, could have asserted, or may assert in the future against Supreme under the Contract Disputes Act;

- (e) Any liability based upon obligations created by this Agreement;
- (f) Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- (g) Any liability for failure to deliver goods or services due;
- (h) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Nothing in this agreement, including the releases in Paragraphs 4 and 5, shall preclude the United States from asserting any affirmative defense for any conduct, including the Covered Conduct, with respect to Contract No. SPM300-05-D-3130 that the United States has asserted, could have asserted, or may assert in the future against Supreme in any and all appeals of Supreme filed before the Armed Services Board of Contract Appeals and the Court of Federal Claims, or preclude Supreme from defending against, seeking dismissal of, opposing, or otherwise challenging any such affirmative defense that the United States has asserted, could have asserted, or may assert in the future against Supreme in any and all appeals of Supreme filed before the Armed Services Board of Contract Appeals and Court of Federal Claims.

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement, but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the

filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action as related to Supreme, or any other suit, proceeding, or matter involving Supreme, including without limitation the matters listed in Paragraph 6(d) of this Agreement and any proceeding which Relator could assert constitutes or results in an alternative remedy within the meaning of the False Claims Act.

9. Supreme waives and shall not assert any defenses Supreme may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

10. Supreme fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Supreme has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof. Supreme specifically reserves and excludes from this release the claims of Supreme Foodservice GmbH set forth in the *Appeal of Supreme Foodservice GmbH, Under Contract No. SPM300-05-D-3130*, ASBCA Nos. 57884 and 58666, 59636, 58958, 58959, 58982, 59038, 59391, 59164, 59165, 59615, 59393, 59392, 59418, 59419, 59487, 59481, 59618, 59619, 59653,

59420, 59676, 59681, 59682, 59683, and any administrative contract claims under the Prime Vendor Contract for conduct unrelated to the Covered Conduct that Supreme Foodservice GmbH has asserted, could have asserted, or may assert in the future against the United States or its agencies under the Contract Disputes Act.

11. Supreme fully and finally releases the Relator and his heirs, successors, attorneys, agents, and assigns from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Supreme has asserted, could have asserted, or may assert in the future against the Relator, including without limitation, claims related to the Civil Action, his initiation or investigation of or participation in the Civil Action, his employment with Supreme, his post-employment contract with Supreme, any assertion relating to post-employment conduct, and each and every other claim of any type, arising under the law of any nation, including without limitation, the United States, Germany, and Dubai.

12. (a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Supreme and its present or former owners, officers, directors, employees, shareholders, and agents in connection with:

- (i) the matters covered by this Agreement and the Plea Agreements;
- (ii) the United States' audit(s) and civil and criminal investigations of the matters covered by this Agreement;
- (iii) Supreme's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

(iv) the negotiation and performance of this Agreement and the Plea Agreements;

(v) the payment Supreme makes to the United States pursuant to this Agreement and any payments that Supreme may make to Relator, including costs and attorneys' fees are unallowable costs for government contracting purposes ("Unallowable Costs").

(b) Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Supreme, and Supreme shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Supreme shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Supreme or any of its subsidiaries or affiliates from the United States. Supreme agrees that the United States, at a minimum, shall be entitled to recoup from Supreme any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. Supreme shall identify these Unallowable Costs through: (1) accounting records to the extent that is possible; (2) memorandum records including diaries and informal logs, regardless of whether such records are part of official documentation, where accounting records are not available; and (3) itemized estimates where no other accounting basis is available. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Supreme's books and records and to disagree with any calculations submitted by Supreme or any of its subsidiaries or affiliates regarding any Unallowable Costs included in

payments previously sought by Supreme, or the effect of any such Unallowable Costs on the amount of such payments.

13. Supreme (including any and all parent companies, subsidiaries, successors in interest, and affiliates) agrees to cooperate truthfully and completely with the United States, including making its owners, employees, and other individuals under its control available for interviews and providing truthful testimony at any proceeding, consistent with the rights and privileges of such individuals called upon to provide cooperation under this paragraph.

Supreme agrees to so cooperate in any investigation or proceeding as requested by the United States. Supreme agrees that its cooperation shall include, but not be limited to:

(a) producing all records, whether written, recorded, electronic, or machine readable, in its actual or constructive possession, custody, or control, of evidentiary value or as requested by attorneys and agents of the United States;

(b) making itself (including owners and other individuals under its control) available for interviews in the United States of America upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any investigation or proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503), and related offenses;

(d) when called upon to do so by the United States in connection with any investigation or proceeding, testifying in grand jury, trial, and other judicial proceedings, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making

false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), obstruction of justice (18 U.S.C. § 1503), and related offenses.

Supreme understands that the United States alone will determine what forms of cooperation to request from Supreme.

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

15. Upon receipt of the payments described in Paragraphs 1, 2, and 3, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Partial Dismissal of the Civil Action pursuant to Rule 41(a)(1), as follows. Relator and the United States shall jointly stipulate to dismissal of the Civil Action against Supreme with prejudice to the Relator on all claims and with prejudice to the United States for the Covered Conduct, but otherwise without prejudice to the United States. No other defendant shall be dismissed from the Civil Action.

16. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, except insofar as Supreme has agreed to pay Relator's attorneys' fees as reflected in Paragraph 3.

17. Each party and signatory to this Agreement represents that it or he or she freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

18. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of Pennsylvania. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Agreement constitutes the complete agreement between the Parties.

This Agreement may not be amended except by written consent of the Parties.

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

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

22. This Agreement is binding on Supreme's successors, transferees, heirs, and assigns.


23. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

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


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

THE UNITED STATES OF AMERICA

DATED: December 8, 2014

BY: 
ZANE DAVID MEMEGER
United States Attorney for the Eastern
District of Pennsylvania

DATED: December 8, 2014

BY: 
MARGARET L. HUTCHINSON
MARY CATHERINE FRYE
COLIN M. CHERICO
Attorneys, Civil Division
United States Attorney's Office for the
Eastern District of Pennsylvania

And

DATED: _____

BY: _____
MICHAEL D. GRANSTON
MICHAL TINGLE
ART J. COULTER
Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

THE UNITED STATES OF AMERICA

DATED: _____

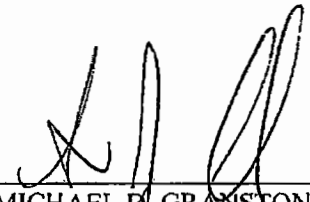
BY: _____
ZANE DAVID MEMEGER
United States Attorney for the Eastern
District of Pennsylvania

DATED: _____

BY: _____
MARGARET L. HUTCHINSON
MARY CATHERINE FRYE
COLIN M. CHERICO
Attorneys, Civil Division
United States Attorney's Office for the
Eastern District of Pennsylvania

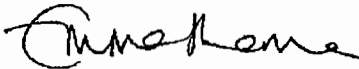
And

DATED: Dec. 7, 2014

BY: 
MICHAEL D. GRANSTON
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Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DEFENDANTS

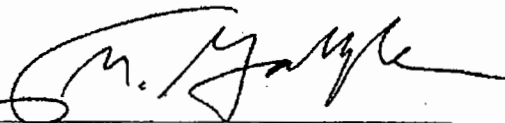
DATED: 12/6/14

BY: 
EMMA SHARMA
General Counsel SGUSA and Group
Ethics & Compliance Officer
Supreme USA

DATED: 12/6/14

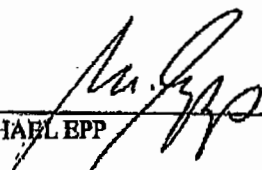
BY: 
STEPHEN ORENSTEIN

DATED: 12/6/14

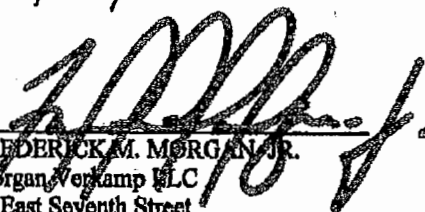
BY: 
THOMAS M. GALLAGHER
Pepper Hamilton LLP
Counsel for Supreme

MICHAEL EPP - RELATOR

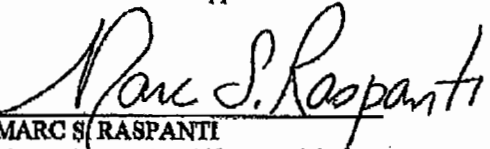
DATED: Dec. 5, 2014

BY: 
MICHAEL EPP

DATED: 6 DEC '14

BY: 
FREDERICK M. MORGAN JR.
Morgan, Veckamp LLC
35 East Seventh Street
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Counsel for Michael Epp

DATED: Dec 5, 2014

BY: 
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