

## **SETTLEMENT AGREEMENT**

### **I. PARTIES**

This Settlement Agreement is entered into by and among the United States of America (United States), acting through the United States Department of Justice and on behalf of the General Services Administration, Aaron J. Westrick, Ph.D., Relator (Westrick or the Relator), and Toyobo Co., Ltd. and Toyobo U.S.A., Inc., f/k/a Toyobo America, Inc. (collectively Toyobo), hereinafter all jointly referred to as the Parties.

### **II. RECITALS**

A. The United States and the Relator allege that at all times relevant from 1998 to on or about August 25, 2005, Toyobo was the manufacturer of Zylon fiber.

B. The United States and the Relator allege that from at least 1998 to August 25, 2005, Toyobo manufactured, marketed and sold Zylon fiber for use in body armor, including ballistic vests, sold in the United States and Toyobo promoted the use of Zylon for ballistics to various federal agencies and to Second Chance Body Armor, Inc. (Second Chance).

C. The United States and the Relator allege that the Zylon-containing body armor manufactured by Second Chance was sold to the United States under a General Services Administration contract, and to various state, local and Indian law enforcement agencies, who were partially reimbursed by the United States for up to 50 percent of the cost of the vests pursuant to the Bullet Proof Vest Grant Partnership Act (BPVGPA), 42 U.S.C. § 379611, *et seq.*, a federally funded program.

D. In February 2004, Relator filed a complaint entitled United States ex rel. Westrick v. Second Chance Body Armor, Inc., et al. (D.D.C. No. 04-0280 PLF) (Second Chance case)

which named Second Chance and its related companies. The Relator amended his complaint to add Toyobo and several former officers and executives of Second Chance. On or about July 1, 2005, the United States filed its complaint and intervened in the Relator's complaint to the extent that it named, *inter alia*, Toyobo, Second Chance and four former officers of Second Chance.

E. In the Second Chance case, the United States and the Relator allege that Toyobo, Second Chance, and others made, or caused to be made, false statements to the United States directly or indirectly in connection with the sale of Second Chance Zylon ballistic vests.

F. In the Second Chance case, the United States and the Relator allege that Toyobo, Second Chance, and others submitted, or caused to be submitted, false claims directly and indirectly in connection with the sale of Second Chance Zylon ballistic vests.

G. In the Second Chance case, the United States and the Relator allege that Toyobo, Second Chance, and others fraudulently induced the United States to pay for and to continue to pay for Second Chance Zylon ballistic vests.

H. In the Second Chance case, the United States and the Relator allege that Toyobo, Second Chance, and others conspired to make, or caused to be made, false statements and claims in connection with the sale of Second Chance Zylon ballistic vests.

I. In the Second Chance case, the United States and the Relator allege that the Zylon ballistic vests sold by Second Chance were defective in that they contained defective Zylon fiber manufactured and sold by Toyobo, that the Zylon fiber was defective in that it was not appropriate for use in ballistic applications, and that Toyobo, Second Chance, and others either knew of, or recklessly failed to determine, the defective nature of the Zylon fiber and of the Second Chance Zylon vests.

J. On or about June 26, 2007, the United States filed a complaint in a separate action entitled, United States v. Toyobo Co., Ltd., et al. (D.D.C. No. 07-1144 PLF) (Toyobo case) which named as defendants, *inter alia*, Toyobo. The Relator is not a party to the Toyobo case.

K. The United States also alleges that from at least 1998 to August 25, 2005, Toyobo manufactured, marketed and sold Zylon fiber for use in body armor, including ballistic vests, sold in the United States and Toyobo promoted the use of Zylon for ballistics to various federal agencies and to various non-Second Chance body armor manufacturers, namely Armor Holdings, Inc., American Body Armor, Inc., Safariland, Inc., Protech Armor, Inc., Point Blank Body Armor, Inc., Protective Apparel Corp. of America, Inc., First Choice Armor & Equipment, Inc., Protective Products International, Inc., and Gator Hawk Armor, Inc. (collectively the Other Body Armor Manufacturers).

L. The United States alleges that the Zylon-containing body armor manufactured by the Other Body Armor Manufacturers was sold to the United States under General Services Administration contracts, and to various state, local and Indian law enforcement agencies, who were partially reimbursed by the United States for up to 50 percent of the cost of the vests pursuant to the BPVGPA.

M. In the Toyobo case, the United States alleges that Toyobo made, or caused to be made, false statements to the United States directly or indirectly in connection with the sale of the Other Body Armor Manufacturers' Zylon ballistic vests.

N. In the Toyobo case, the United States alleges that Toyobo submitted, or caused to be submitted, false claims directly and indirectly in connection with the sale of the Other Body Armor Manufacturers' Zylon ballistic vests.

O. In the Toyobo case, the United States alleges that Toyobo fraudulently induced the United States to pay for and to continue to pay for Zylon ballistic vests.

P. In the Toyobo case, the United States alleges that the Zylon ballistic vests sold by the Other Body Armor Manufacturers were defective in that they contained defective Zylon fiber manufactured and sold by Toyobo, that the Zylon fiber was defective in that it was not appropriate for use in ballistic applications, and that Toyobo either knew of, or recklessly failed to determine, the defective nature of the Zylon fiber and of the Other Body Armor Manufacturers' Zylon vests.

Q. The United States contends that it has certain civil claims against Toyobo on the Covered Conduct (paragraphs A-P).

R. This Settlement Agreement is neither an admission of liability by Toyobo nor a concession by the United States that its claims are not well founded. Toyobo denies each and every allegation of wrongdoing in Paragraphs II.A.-Q.

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

### **III. TERMS AND CONDITIONS**

1. Payment to the United States by Toyobo and corresponding payments by the United States to the Relator:

- a. Toyobo shall pay to the United States the total sum of Sixty-Six Million Dollars (\$66,000,000) (Settlement Amount) within ten (10) days of the Effective Date of this Settlement Agreement.

- b. Payment to the United States of the Settlement Amount shall be made by electronic funds transfer pursuant to written instructions to be provided to Toyobo by the Department of Justice.
- c. None of the monies paid by Toyobo pursuant to this Settlement Agreement are restitution.
- d. Upon receipt of the payment described in Paragraph 1(a), above, the United States, the Relator and Toyobo in the Second Chance case and the United States and Toyobo in the Toyobo case shall promptly sign and file in each of those cases a Joint Stipulation of Dismissal with Prejudice of the Claims Against Toyobo in those cases pursuant to Rule 41(a)(1).
- e. Conditioned upon the United States receiving the Settlement Amount from Toyobo, the United States agrees that it shall pay to Relator by electronic funds transfer \$5,775,000 (the Relator's Share) as soon as feasible after receipt of the Settlement Amount.

2. Subject to the exceptions set forth in Paragraph 4 below, and conditioned upon the full payment of the Settlement Amount, the United States releases Toyobo, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, only from any civil or administrative monetary claims the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§3729-3733; the Contract Disputes Act, 41 U.S.C. §§7101-7109; the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-

3812; the common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud. Likewise, subject to the exceptions in Paragraph 4 below, and conditioned upon the full payment of the Settlement Amount, the Relator, for himself and of his heirs, successors, attorneys, agents and assigns, releases Toyobo, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any claims he has or may have against Toyobo, including but not limited to any claims under the False Claim Act, any claims for attorney's fees and costs under the False Claims Act, or any claims under the common law, including but not limited to fraud, breach of contract, unjust enrichment or payment by mistake.

3. Toyobo fully and finally releases the United States, its agencies, employees, servants, officers and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Toyobo has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, officers and agents, related to the Covered Conduct and the United States' investigation, prosecution, and disposition thereof, including but not limited to any related criminal, civil and/or administrative actions, lawsuits, and/or investigations. Likewise, Toyobo releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which Toyobo has asserted, could have asserted, or may assert in the future against the Relator, his attorneys, and/or agents, related to the Covered Conduct and the Relator's role and participation in the United States' investigation, prosecution, and disposition thereof, including but not limited to any related criminal, civil and/or administrative actions, lawsuits, and/or investigations.

4. Notwithstanding the releases given in Paragraphs 2 of this Settlement Agreement or any other term of this Agreement, the following claims 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. Any administrative liability, including the suspension or debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for personal liability or property damage or other consequential damages arising from the Covered Conduct; and
- g. Any liability of individuals, including any liability of Richard C. Davis; and
- h. Any liability of entities other than Toyobo and the affiliates of Toyobo specified in Paragraph 2, including any liability of Honeywell and related entities.

5. Unallowable Costs

- a. Unallowable Costs Defined: All costs (as defined in the federal Acquisition Regulation (FAR) § 31.205-47), incurred by or on behalf of Toyobo and its present or former officers, directors, employees, shareholders, and agents in connection with:
  - (1) the matters covered by this Agreement,
  - (2) the United States' audit(s) and investigation(s) of the matters covered by this Agreement,

- (3) Toyobo's investigation, defense and corrective actions undertaken in response to the United States' audit(s) and investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement, and
- (5) the payment Toyobo makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

- b. Future Treatment of Unallowable Costs: Unallowable costs will be separately determined and accounted for by Toyobo, and Toyobo will not charge such Unallowable Costs directly or indirectly to any contracts with the United States.
- c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Toyobo shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Toyobo or any of its subsidiaries or affiliates from the United States. Toyobo agrees that the United States, at a minimum, shall be entitled to recoup from Toyobo any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Toyobo books and records and to



disagree with any calculations submitted by Toyobo or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Toyobo, or the effect of any such Unallowable Costs on the amount of such payments.

6. Toyobo agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Toyobo agrees to make one of its employees, Tadao Kuroki available to give testimony at trial and be interviewed in Washington, D.C. prior to trial by counsel for the United States as long as he remains employed by Toyobo. Toyobo shall produce Mr. Kuroki at its own expense and at the time requested by the United States.

7. Toyobo hereby waives and shall not assert any defenses it may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

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 Relator's Share described in Paragraph 1, 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 under 31 U.S.C. § 3730 with respect to claims against Toyobo, and from any claims to a share of the proceeds of this Agreement or from any claims arising from the filing of the Second Chance case against Toyobo, or the Toyobo case against Toyobo. This Paragraph specifically does not address or resolve claims in the Second Chance case against parties other than Toyobo.

9. This document contains the full and complete Settlement Agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

10. All Parties consent to each Party's disclosure of this Settlement Agreement, and information about this Settlement Agreement, to the public.

11. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is the United States District Court for the District of Columbia.

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

13. For purposes of construction, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

14. This Settlement Agreement is intended to be for the benefit of Toyobo, the United States and the Relator only, and by this instrument, Toyobo, the United States, and the Relator do not release any claims against any other person or entity, except those identified within this Agreement.

15. Each Party and signatory to this Agreement represents that it freely and voluntarily entered into this Agreement without any degree of duress or compulsion. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

17. This Agreement is binding on Toyobo's successors, transferees, and assigns and on the Relator's successors, transferees and assigns.

18. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement).

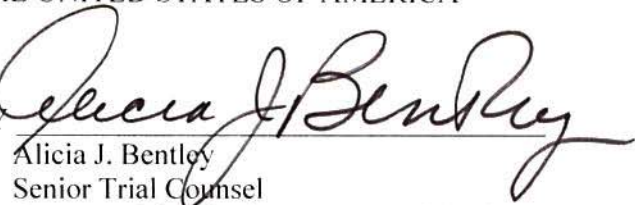
19. Facsimiles or scanned PDFs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed the foregoing Settlement Agreement or counterparts thereof, intending to be bound.

THE UNITED STATES OF AMERICA

DATED: March 15, 2018

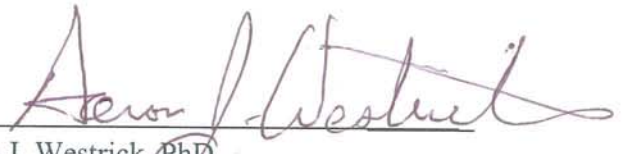
BY



Alicia J. Bentley  
Senior Trial Counsel  
Commercial Litigation Branch, Civil Division  
United States Department of Justice

AARON J. WESTRICK, Ph.D.

DATED: March 12, 2018

BY   
Aaron J. Westrick, PhD  
Relator

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Stephen M. Kohn  
Kohn, Kohn, and Colapinto LLP

Counsel for Relator  
Aaron J. Westrick, Ph.D.

TOYOBO CO., LTD. & TOYOBO U.S.A., INC.  
f/k/a TOYOBO AMERICA, INC.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Seiji Narahara  
President, Toyobo Co., Ltd.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Hiraoki Inoue  
President, Toyobo U.S.A., Inc. f/k/a Toyobo  
America, Inc.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Arvin Maskin  
Weil, Gotshal & Manges, LLP

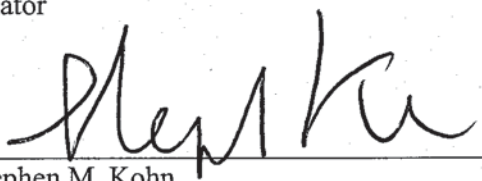
Counsel for Defendants  
Toyobo Co. Ltd. & Toyobo U.S.A., Inc. f/k/a  
Toyobo America, Inc.

AARON J. WESTRICK, Ph.D.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Aaron J. Westrick, PhD  
Relator

DATED: March 12, 2018

BY   
Stephen M. Kohn  
Kohn, Kohn, and Colapinto LLP

Counsel for Relator  
Aaron J. Westrick, Ph.D.

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President, Toyobo Co., Ltd.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Hiraoki Inoue  
President, Toyobo U.S.A., Inc. f/k/a Toyobo  
America, Inc.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Arvin Maskin  
Weil, Gotshal & Manges, LLP

Counsel for Defendants  
Toyobo Co. Ltd. & Toyobo U.S.A., Inc. f/k/a  
Toyobo America, Inc.

AARON J. WESTRICK, Ph.D.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Aaron J. Westrick, PhD  
Relator

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Stephen M. Kohn  
Kohn, Kohn, and Colapinto LLP

Counsel for Relator  
Aaron J. Westrick, Ph.D.

TOYOBO CO., LTD. & TOYOBO U.S.A., INC.  
f/k/a TOYOBO AMERICA, INC.

DATED: March 15, 2018

BY  \_\_\_\_\_  
Seiji Narahara  
President, Toyobo Co., Ltd.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Hiroaki Inoue  
President, Toyobo U.S.A., Inc. f/k/a Toyobo  
America, Inc.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Arvin Maskin  
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Counsel for Defendants  
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f/k/a Toyobo America, Inc.

AARON J. WESTRICK, Ph.D.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Aaron J. Westrick, PhD  
Relator

DATED: March \_\_, 2018

BY \_\_\_\_\_  
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Kohn, Kohn, and Colapinto LLP


Counsel for Relator  
Aaron J. Westrick, Ph.D.

TOYOBO CO., LTD. & TOYOBO U.S.A., INC.  
f/k/a TOYOBO AMERICA, INC.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Seiji Narahara  
President, Toyobo Co., Ltd.

DATED: March 4, 2018

BY  \_\_\_\_\_  
Hiroaki Inoue  
President, Toyobo U.S.A., Inc. f/k/a Toyobo  
America, Inc.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Arvin Maskin  
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Counsel for Defendants  
Toyobo Co., Ltd. & Toyobo U.S.A., Inc.  
f/k/a Toyobo America, Inc.

AARON J. WESTRICK, Ph.D.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Aaron J. Westrick, PhD  
Relator

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Stephen M. Kohn  
Kohn, Kohn, and Colapinto LLP

Counsel for Relator  
Aaron J. Westrick, Ph.D.

TOYOBO CO., LTD. & TOYOBO U.S.A., INC.  
f/k/a TOYOBO AMERICA, INC.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Seiji Narahara  
President, Toyobo Co., Ltd.

DATED: March \_\_, 2018

BY \_\_\_\_\_  
Hiroaki Inoue  
President, Toyobo U.S.A., Inc. f/k/a Toyobo  
America, Inc.

DATED: March 15, 2018

BY  \_\_\_\_\_  
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Counsel for Defendants  
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