

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America on behalf of United States Customs and Border Protection (collectively, the “United States”), RGE Motor Direct Inc. d/b/a One Big Outlet (“RGE”), and Chi Kwan Chan (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. RGE is an importer and seller of merchandise. It has a principal place of business in City of Industry, California.

B. On June 11, 2021, Relator filed a *qui tam* action in the United States District Court for the Central District of California, captioned *United States ex rel. Chan v. RGE Motor Direct Inc. and Phoenix Tools, Inc.*, No. 21-cv-4763-RGK(KSx), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). On March 14, 2022, the United States filed a notice of its election to decline intervention in the Civil Action.

C. On May 4, 2022, Relator filed a First Amended False Claims Act Complaint (“FAC”) in the Civil Action. The FAC alleges that additional tariffs on merchandise RGE imported from China took effect beginning in June 2018, and that, from that time through the filing of the FAC, RGE engaged in a scheme to evade paying those additional tariffs in violation of the reverse false claims and conspiracy provisions of the False Claims Act, 31 U.S.C. § 3729(a)(1)(C), (G). Specifically, Relator alleges that RGE shifted much of the real price of the imported merchandise to bogus invoices for “testing” or “certification” of the merchandise, and then reported – and paid duty based on – the fraudulently reduced prices. The foregoing allegations are referred to hereinafter as the “Covered Conduct.”

D. RGE denies all of the allegations in the FAC.

E. 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.

In consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. RGE shall pay to the United States three million two hundred and fifty thousand dollars (\$3,250,000.00) plus interest at a rate of three (3.0) percent per annum running from August 19, 2022, until the date of payment (Settlement Amount), of which one million six hundred and twenty five thousand dollars (\$1,625,000) is restitution, no later than ten (10) days after the Effective Date of this Agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Central District of California.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay 27.5% of Settlement Amount (including accrued interest) to Relator by electronic funds transfer (Relator's Share).

3. No later than ten (10) days after the Effective Date of this Agreement, RGE will pay Relator's counsel \$231,517 for expenses, attorneys' fees, and costs pursuant to 31 U.S.C. § 3730(d)(2).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount (including interest due under Paragraph 1), the United States releases RGE together with its current and former parents, divisions, subsidiaries, successors, and assigns 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; and the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Upon the United States' receipt of the Settlement Amount and RGE's full payment of the amount due under Paragraph 3, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases RGE and its current and former parents, divisions, subsidiaries, successors, assigns, directors, officers, and employees from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against RGE related to the Covered Conduct and Relator's investigation and prosecution thereof, *provided that* Relator does not release any claims against Phoenix Tools, Inc., or its current and former parents, divisions, subsidiaries, successors, assigns, directors, officers, and employees.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights 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 this Agreement, any administrative liability or enforcement right or any administrative remedy, 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;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. 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, Relator and his respective 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.

8. RGE waives and shall not assert any defenses RGE 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.

9. RGE 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 RGE 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 or the United States' investigation or prosecution thereof.

10. RGE fully and finally releases Relator and his heirs, successors, attorneys, agents, and assigns from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that RGE has asserted, could have asserted, or may assert in the future against Relator, related to the Covered Conduct and Relator's investigation and prosecution thereof.

11. 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 RGE, 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 civil investigation(s) of the matters covered by this Agreement;
- (3) RGE's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment RGE makes to the United States pursuant to this Agreement and any payments that RGE may make to Relator, including costs and attorneys fees, 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 RGE, and RGE 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, RGE shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by RGE or any of its subsidiaries or affiliates from the United States. RGE agrees that the United States, at a minimum, shall be entitled to recoup from RGE 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 RGE's books and records and to disagree with any calculations submitted by RGE or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by RGE, or the effect of any such Unallowable Costs on the amount of such payments.

12. RGE agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, RGE shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. RGE further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and

records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

13. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity.

14. Upon the United States' receipt of the Settlement Amount and RGE's full payment of the amount due under Paragraph 3, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal with Prejudice of the Civil Action as to all claims against RGE, pursuant to Rule 41(a)(1).

15. 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 as provided in Paragraph 3 of this Agreement.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. 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 Central District of California. 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.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

21. This Agreement is binding on RGE's successors, transferees, heirs, and assigns.

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

23. All Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

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

**THE UNITED STATES OF AMERICA**

DATED: 11/3/2022

BY:



\_\_\_\_\_  
Lisa A. Palombo  
Assistant United States Attorney  
Central District of California

**DEFENDANT – RGE MOTOR DIRECT INC.**

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
[Name]  
[Title]  
RGE Motor Direct Inc.

DATED: \_\_\_\_\_

BY:

\_\_\_\_\_  
Adam R. Tarosky  
Jonah D. Retzinger  
  
Nixon Peabody LLP  
Counsel for RGE Motor Direct Inc.



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

21. This Agreement is binding on RGE's successors, transferees, heirs, and assigns.

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

23. All Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

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

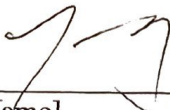
**THE UNITED STATES OF AMERICA**

DATED: 11/3/2022

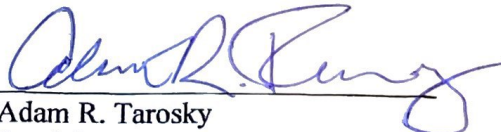
BY: \_\_\_\_\_  
Lisa A. Palombo  
Assistant United States Attorney  
Central District of California

**DEFENDANT – RGE MOTOR DIRECT INC.**

DATED: 11/4/2022

BY:   
\_\_\_\_\_  
[Name] Raymond Pang  
[Title] VP  
RGE Motor Direct Inc.

DATED: 11/4/2022

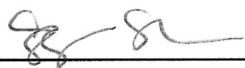
BY:   
\_\_\_\_\_  
Adam R. Tarosky  
Jonah D. Retzinger  
  
Nixon Peabody LLP  
Counsel for RGE Motor Direct Inc.

RELATOR – CHI KWAN CHAN

DATED: Nov 4, 2022

BY:   
Chi Kwan Chan

DATED: 11/4/22

BY:   
Gregg Shapiro  
Newman & Shapiro  
Counsel for Chi Kwan Chan