

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into by and between the United States of America, acting through the United States Department of Justice and on behalf of the United States Small Business Administration (“SBA”) (collectively, the “United States”); the Relator Daniel Foster (“Relator”); and KOKUSAI DENKI Electric America, Inc., formerly known as Hitachi Kokusai Electric Comark, LLC (“Comark”) (hereafter, the United States, Relator, and Comark are collectively referred to as the “Parties”), through their authorized representatives.

RECITALS

A. Comark is a for-profit company headquartered in Southwick, Massachusetts that designs and markets broadcast technology.

B. The SBA is an independent agency of the United States government that provides aid, counsel, and assistance to small businesses and entrepreneurs. The Coronavirus Aid, Relief, and Economic Security Act, Section 1102, vested the SBA with the responsibility of managing the Paycheck Protection Program (“PPP”) under the SBA’s 7(a) Loan Program. The PPP was a federal program that provided emergency relief to small businesses affected by the COVID-19 pandemic. *See* 15 U.S.C. § 636(a)(36). The SBA administered the PPP and guaranteed loans that were made according to PPP rules.

C. Under the PPP, an entity could receive up to two loans—a “First Draw” PPP loan and a “Second Draw” PPP loan. An applicant could qualify for a Second Draw loan if, among other things, it had no more than 300 employees on average during the 12 months preceding its loan application or during the period it used to calculate average monthly payroll. 15 U.S.C. § 636(a)(37)(A)(iv); *see also* SBA Form 2483-SD, Instructions. For purposes of determining an applicant’s eligibility, including number of employees, a borrower had to consider its affiliates.

See 15 U.S.C. § 636(a)(36)(D)(iv); 15 U.S.C. § 636(a)(37)(E). Under the SBA's rules, affiliates included entities with common equity ownership. 13 C.F.R. § 121.301(f) (2019).

D. On April 16, 2025, Relator filed a qui tam action in the United States District Court for the District of Massachusetts captioned *United States of America ex rel. Daniel Foster v. Hitachi Kokusai Electric Comark LLC*, 1:25-cv-30066-MGM (D. Mass.), pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the "Civil Action"). Relator alleged that Comark violated the False Claims Act because it was ineligible for the Second Draw PPP loan it received because it had more than 300 employees, when considering affiliates.

E. Comark admits, acknowledges, and accepts responsibility for the following facts:

1. In January 2021, SBA approved a \$1,342,232 Second Draw PPP loan to Comark through a private lender (SBA#6485298306). On its application, Comark certified that it was eligible for the loan under the PPP regulations in effect at the time of the application. On the application for this loan, Comark represented that it had 67 employees, including affiliates' employees.

2. In January 2022, Comark sought and received forgiveness from SBA of the full amount of Comark's Second Draw loan.

3. When it applied for the Second Draw loan and when it applied for forgiveness, Comark did not qualify for the Second Draw loan because it had more than 300 employees, when considering employees of its affiliates. Prior to 2021 and through 2022, Comark was a wholly owned subsidiary of Hitachi Kokusai Electric Inc. ("Kokusai"), a company based in Tokyo. Between 2021 and through 2022, Kokusai had more than 300 employees, not including Comark's employees.

F. The foregoing conduct described in paragraph E, including subparagraphs, is hereinafter referred to as the “Covered Conduct.” The United States contends it has certain civil claims against Comark based on the Covered Conduct for submitting or causing the submission of false claims to the SBA arising from Comark’s Second Draw PPP loan. In particular, the United States contends that, had it complied with the PPP rules, Comark would not have been eligible for a Second Draw loan. The United States also contends that because of the Covered Conduct, the SBA paid \$1,342,232 in principal, \$12,415.65 in interest, and \$40,266.96 in lender fees.

G. Comark received credit under the Department of Justice’s guidelines for taking disclosure, cooperation, and remediation into account in False Claims Act cases, Justice Manual § 4-4.112. Among other actions, Comark cooperated with the government’s investigation, immediately acknowledged wrongdoing, and sought to resolve this matter expeditiously.

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

TERMS AND CONDITIONS

1. Comark shall pay to the United States the sum of two million ninety-two thousand three hundred seventy-one dollars and ninety-two cents (\$2,092,371.92), of which one million three-hundred-ninety-four thousand nine-hundred-fourteen dollars and sixty-one cents (\$1,394,914.61) is restitution, plus interest at a rate of five percent (5%) from September 3, 2025, and continuing through the date of payment (the “Settlement Amount”), no later than ten (10) days after the Effective Date of this Agreement pursuant to written instructions to be provided by the Office of the United States Attorney for the District of Massachusetts.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay ten percent (10%) of the Settlement Amount to Relator by electronic funds transfer (“Relator’s Share”).

3. Within thirty (30) days of the Effective Date of this agreement, Comark shall pay to Relator the sum of \$8,516.26 for expenses and attorney’s fees and costs pursuant to 31 U.S.C. § 3730(d). Immediately upon execution of this Agreement, Relator shall provide wire instructions to Comark to effectuate this payment.

4. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Comark, together with its current and former parents, subsidiaries, divisions, 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 Administrative Remedies for False Claims Act, 31 U.S.C. §§ 3801-3812, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Notwithstanding the release 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; and
- f. Any liability of any individuals.

6. 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 Relator's Share, 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.

7. Conditioned upon its receipt of the payment from Comark described in Paragraph 3, Relator, for himself and his heirs, successors, attorneys, agents, and assigns, releases Comark, together with its current and former parent corporation or entities, subsidiaries, divisions, and affiliates, and the successors and assigned for any of them, and its directors, officers, agents, employees and attorneys, from any liability to the Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

8. Comark 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.

9. Comark fully and finally releases the United States and its agencies, officers, agents, employees, and servants from any claims (including for attorneys' fees, costs, and expenses of every kind and however denominated) that Comark has asserted, could have asserted, or may assert in the future against the United States or its agencies, officers, agents, employees, or servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. Comark, for itself and its successors, directors, officers, agents, employees, attorneys, and assigns, fully and finally releases Relator and his counsel from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Comark 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. Comark agrees to the following:

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 the Released Parties, and their 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 and any criminal investigation(s) of the matters covered by this Agreement;
- (3) Comark's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment Comark makes to the United States and Relator 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 Comark, and Comark 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, Comark shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Comark or any of their subsidiaries or affiliates from the United States. Comark agrees that the United States, at a minimum, shall be entitled to recoup from Comark 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 Comark’s books and records and to disagree with any calculations submitted by Comark or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Comark, or the effect of any such Unallowable Costs on the amount of such payments.

12. Comark agrees to cooperate fully and truthfully with the United States’ investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Comark 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. Comark 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.

14. Upon receipt of the payments described in Paragraphs 1 and 3, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal as to Comark. The Joint Stipulation of Dismissal shall state that: (1) claims for the allegations described in the Covered Conduct are dismissed with prejudice to the United States; (2) all other claims in the Civil Action as to Comark, including claims under 31 U.S.C. §§ 3729-3733, shall be dismissed without prejudice to the United States; and (3) all claims in the Civil Action shall be dismissed with prejudice as to Relator.

15. Subject to Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance 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 District of Massachusetts. 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 Comark'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 United States' 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.

[SIGNATURES TO FOLLOW ON NEXT PAGES]

THE UNITED STATES OF AMERICA

Date

By:

Brian M. LaMacchia
Assistant U.S. Attorney
United States Attorney's Office
District of Massachusetts

KOKUSAI DENKI ELECTRIC AMERICA, INC.

12/1/2025

Date

Signed by:
Masao Ichikawa

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Masao Ichikawa
President & Chief Executive Officer
Authorized Corporate Officer for
KOKUSAI DENKI Electric America,
Inc.

12/1/2025

Date

Jennifer Pedevillano

By: Jennifer A. Pedevillano, Esq.
Halloran Sage
Counsel for KOKUSAI DENKI Electric
America, Inc.

RELATOR DANIEL FOSTER

11/24/25

Date

By:

Daniel Foster

Daniel Foster

Relator

11/24/25

Date

By:

Gregg Shapiro

Gregg Shapiro, Esq.

Gregg Shapiro Law

Counsel for Relator