

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the U.S. Department of Homeland Security, United States Customs & Border Protection (“Customs”) (collectively the “United States”), Otter Products LLC dba OtterBox (“OtterBox”), and Relator Bonnie Jimenez (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. OtterBox is a company headquartered in Fort Collins, Colorado that sells protective cases for smartphones and tablets. Between 2006 and 2011, OtterBox manufactured many of its products overseas, and then imported those products into the United States for distribution and retail sale. OtterBox was responsible for the submission of entry documents to Customs and for the payment of any customs duties owed on those imported products. On November 17, 2010, OtterBox submitted a letter to the Commissioner of Customs referencing the prior disclosure provisions of 19 U.S.C. § 1592(c)(4) and 19 C.F.R. § 162.74, and stating that OtterBox had failed to calculate and include the value of assists, as defined by 19 U.S.C. § 1401a(h)(1), in the dutiable value it declared to Customs for certain imported merchandise, and that as a result, it underpaid certain customs duties owed to the United States. After that correspondence, OtterBox paid Customs the duties it owed on the value of those previously undeclared assists.

B. On November 10, 2011, Relator Bonnie Jimenez filed a *qui tam* action in the United States District Court for the District of Colorado captioned *United States ex*

*rel. Bonnie Jimenez v. Otter Products LLC, et al.*, Civil Action No. 11-cv-02937-RM-MJW, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (“the Civil Action”). OtterBox is named as a defendant in that action. The *qui tam* complaint alleged that from 2006 through 2011, OtterBox failed to include the value of certain “assists,” as defined by 19 U.S.C. § 1401a(h)(1), when declaring the dutiable value of its imported merchandise. Specifically, Relator alleged that when OtterBox calculated the transaction value of its products in order to determine the amount of customs import duties it owed to Customs, it knowingly did not account for the costs of assists for: (1) foreign engineering, design, and product development services; and (2) foreign design, preparation, and manufacture of the molds and dies used by the manufacturer. According to Relator, OtterBox knowingly made or caused to be made false statements to Customs about the transaction value of its imported products in order to avoid paying owed customs duties.

C. The United States contends that from January 1, 2006 through December 31, 2011, OtterBox knowingly omitted the value of assists, as defined by 19 U.S.C. § 1401a(h)(1), from the dutiable value it declared to Customs on the entry documents it submitted to Customs for merchandise OtterBox imported from January 1, 2006 through December 31, 2011. The United States also contends that OtterBox knowingly made or caused to be made false statements in other documents submitted to Customs concerning the value of assists, and the customs duties OtterBox owed on the value of assists, for merchandise OtterBox imported between January 1, 2006 through December 31, 2011. The United States alleges that as a result of OtterBox’s omissions and false statements concerning the value of assists for merchandise OtterBox imported from January 1, 2006

through December 31, 2011, OtterBox knowingly underpaid the customs duties it owed to the United States on that merchandise. The conduct described in this paragraph is referred to below as the "Covered Conduct."

The Covered Conduct does not include, and specifically excludes (see Paragraph 6), any violations of the customs laws discussed in the letters OtterBox submitted to the Commissioner of Customs through the Port of Anchorage, Alaska, dated May 16, 2012 and July 9, 2012, referencing the prior disclosure provisions, 19 U.S.C. § 1592(c)(4) and 19 C.F.R. § 162.74, even if the violations discussed in those letters pertain to some or all of the same entries and/or merchandise as the Covered Conduct.

D. OtterBox denies the contentions of the Relator and the United States. This Settlement Agreement is neither an admission of liability by OtterBox nor a concession by the United States that its claims are not well founded.

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.

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 Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. OtterBox shall pay to the United States four million three hundred thousand dollars (\$4,300,000.00) ("the Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for

the District of Colorado no later than ten (10) days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount from OtterBox and as soon as feasible after receipt, the United States shall pay eight hundred thirty thousand dollars (\$830,000.00) to Relator by electronic funds transfer.

3. No later than ten (10) days after the Effective Date of this Agreement, OtterBox shall pay Relator two hundred fifty thousand (\$250,000.00) for expenses, attorneys' fees, and costs, in accordance with 31 U.S.C. § 3730(d)(2).

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon OtterBox's full payment of the Settlement Amount, the United States releases OtterBox, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers, directors, and affiliates; and the successors 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 Tariff Act of 1930, as amended; any statutory provision creating a cause of action for civil damages or civil penalties for which the Civil Division of the Department of Justice has actual or present authority to assert and compromise pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(d); or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon OtterBox's full payment of the Settlement Amount, as described in Paragraph 1 above,

and the amount for expenses, attorneys' fees and costs to be remitted to Relator pursuant to 31 U.S.C. § 3730(d), as described in Paragraph 3 above, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, fully and finally releases, waives, and forever discharges, and will be deemed to have released and forever discharged, OtterBox and its current and former officers, directors, agents, servants, and employees and the assigns of each of them, from any claim or cause of action which Relator may now have or claim to have against OtterBox, of any kind, character or nature whatsoever, whether known or unknown, fixed or contingent, in law or in equity, in contract or tort, or under any state or federal statute or regulation, arising in any way out of or connected in any way with the facts, claims, and circumstances alleged in, arising under, or arising from the filing of the Civil Action, or from any past activities and actions of OtterBox, or from any civil monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. § 3730(b) and (d) or any similar federal or state statute.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this 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. 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 any violations of the customs laws discussed in the letters OtterBox submitted to the Commissioner of Customs through the Port of Anchorage, Alaska, dated May 16, 2012 and July 9, 2012, referencing the prior disclosure provisions, 19 U.S.C. § 1592(c)(4) and 19 C.F.R. § 162.74, even if the violations discussed in those letters pertain to some or all of the same entries and/or merchandise as the Covered Conduct.
- 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; or
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and her heirs, successors, attorneys, agents, and assigns shall not object to this Settlement 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 her 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 or related to 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. OtterBox waives and shall not assert any defenses OtterBox 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. 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.

9. OtterBox fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that OtterBox 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.

10. OtterBox fully and finally releases Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that OtterBox has asserted, could have asserted, or may assert in the future against Relator or her heirs, successors, attorneys, agents, and assigns, 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 OtterBox, 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' audits and civil investigations of the matters covered by this Agreement;
- (3) OtterBox's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigations in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment OtterBox makes to the United States pursuant to this Agreement and any payments that OtterBox may make to Relator, including costs and attorney's 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 OtterBox, and OtterBox 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, OtterBox shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable



Costs included in payments previously sought by OtterBox or any of its subsidiaries or affiliates from the United States. OtterBox agrees that the United States, at a minimum, shall be entitled to recoup from OtterBox 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 OtterBox's books and records and to disagree with any calculations submitted by OtterBox or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by OtterBox, or the effect of any such Unallowable Costs on the amount of such payments.

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

13. Upon receipt of the payment described in Paragraphs 1 and 3, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Fed. R. Civ. P. 41(a)(1) in substantially the form of the Stipulation attached hereto as Exhibit A. The dismissal shall be with prejudice to Relator for all of her claims and with prejudice to the United States only as to the Covered Conduct.

14. Except as provided in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

16. 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 Colorado. 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.

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

18. Each person who signs this Agreement represents and warrants that he or she is duly authorized to do so.

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

20. This Agreement is binding on OtterBox's successors, transferees, heirs, and assigns.

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

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

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

**THE UNITED STATES OF AMERICA**

DATED: 4/1/14 BY: Amanda Rocque  
Amanda Rocque  
Assistant United States Attorney  
U.S. Attorney's Office for the District of Colorado  
1225 Seventeenth Street, Suite 700  
Denver, CO 80202

DATED: 3/31/14 BY: Jeanne E. Davidson  
Jeanne E. Davidson  
Director  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
1100 L Street, N.W.  
Washington, D.C. 20005

DATED: 3/31/14 BY: Stephen C. Tosini  
Stephen C. Tosini  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
1100 L Street, N.W.  
Washington, D.C. 20005

**CUSTOMS AND BORDER PROTECTION**

DATED: BY: \_\_\_\_\_  
Sandra L. Bell  
Executive Director, Regulations and Rulings  
United States Customs and Border Protection  
U.S. Department of Homeland Security  
Ronald Reagan Federal Building  
Washington, DC 20229

**THE UNITED STATES OF AMERICA**

DATED: BY: \_\_\_\_\_  
Amanda Rocque  
Assistant United States Attorney  
U.S. Attorney's Office for the District of Colorado  
1225 Seventeenth Street, Suite 700  
Denver, CO 80202

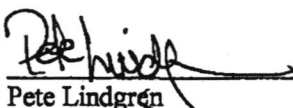
DATED: BY: \_\_\_\_\_  
Jeanne E. Davidson  
Director  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
1100 L Street, N.W.  
Washington, D.C. 20005


DATED: BY: \_\_\_\_\_  
Stephen C. Tosini  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice  
1100 L Street, N.W.  
Washington, D.C. 20005

**CUSTOMS AND BORDER PROTECTION**

DATED: BY: Sandra L. Bell  
Sandra L. Bell  
Executive Director, Regulations and Rulings  
United States Customs and Border Protection  
U.S. Department of Homeland Security  
Ronald Reagan Federal Building  
Washington, DC 20229

**OTTER PRODUCTS, LLC**

DATED: BY:   
Pete Lindgren  
COO  
Otter Products LLC  
209 S. Meldrum  
Fort Collins, CO 80521

DATED: BY:   
Michael C. Theris, Esq.  
Hogan Lovells US LLP  
1200 Seventeenth Street, Suite 1500  
Denver, CO 80202  
Counsel for Otter Products LLC

**RELATOR BONNIE JIMENEZ**

DATED: BY: \_\_\_\_\_  
Bonnie Jimenez  
38 S. 5<sup>th</sup> Avenue  
Brighton, CO 80601

DATED: BY: \_\_\_\_\_  
Michael Porter, Esq.  
4465 Kipling Street  
Wheat Ridge, CO 80033  
Counsel for Bonnie Jimenez

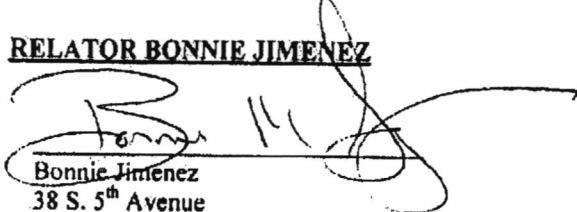
DATED: BY: \_\_\_\_\_

**OTTER PRODUCTS, LLC**

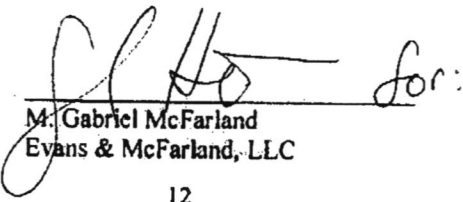
DATED: BY: \_\_\_\_\_  
Pete Lindgren  
COO  
Otter Products LLC  
209 S. Meldrum  
Fort Collins, CO 80521

DATED: BY: \_\_\_\_\_  
Michael C. Theis, Esq.  
Hogan Lovells US LLP  
1200 Seventeenth Street, Suite 1500  
Denver, CO 80202  
Counsel for Otter Products LLC

**RELATOR BONNIE JIMENEZ**

DATED: BY:   
3-27-14 Bonnie Jimenez  
38 S. 5<sup>th</sup> Avenue  
Brighton, CO 80601

DATED: BY: \_\_\_\_\_  
3-27-14 Michael [redacted], Esq.  
4465 Kipling Street  
Wheat Ridge, CO 80033  
Counsel for Bonnie Jimenez

DATED: BY:  for:  
3-28-14 M. Gabriel McFarland  
Evans & McFarland, LLC