

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. JOHN DOE,

Plaintiffs,

v.

STARGATE APPAREL, INC., RIVSTAR
APPAREL, INC. and JOSEPH BAILEY,

Defendants.

14 Civ. 8991 (JPO)

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STARGATE APPAREL, INC., RIVSTAR
APPAREL, INC. and JOSEPH BAILEY,

Defendants.

**STIPULATION AND
ORDER OF SETTLEMENT AND
DISMISSAL**

WHEREAS, this Stipulation and Order of Settlement and Dismissal (“Stipulation”) is entered into by and among plaintiff the United States of America (the “United States” or “Government”), by its attorney, Audrey Strauss, United States Attorney for the Southern District of New York; the relator Ira Plutner (“Relator”), by his authorized representatives; Excel Apparel Corp. f/k/a defendant Stargate Apparel, Inc. (“Stargate”), defendant Rivstar Apparel, Inc. (“Rivstar”), defendant Joseph Bailey (“Bailey,” and together with Stargate and Rivstar, “Defendants”), and the Stargate Apparel, Inc. Employee Stock Ownership Plan (the “Stargate ESOP,” and together with the Government, Relator and Defendants, the “Parties”), by their authorized representatives;

WHEREAS, Stargate and Rivstar are currently both owned by the Stargate ESOP;

WHEREAS, on or about January 17, 2020, Stargate filed a Certificate of Amendment of its Certificate of Incorporation to change the name of the corporation to Excel Apparel Corp.;

WHEREAS, Rivstar has ceased operations, but continues to exist as a corporate entity;

WHEREAS, on or about November 12, 2014, Relator filed a complaint under the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, against Defendants alleging, *inter alia*, that Defendants violated the FCA by submitting false statements to United States Customs and Border Protection (“CBP”) regarding the value of apparel imported into the United States by Defendants thereby wrongfully reducing their obligations to pay statutory customs duties to the United States (the “Relator Complaint”);

WHEREAS, the Government alleges that from 2004 through 2015 (the “Covered Period”), Defendants deliberately and materially understated the value of clothing imported into the United States by Stargate and Rivstar, and submitted, or caused to be submitted, false entry summaries and invoices to CBP to avoid paying customs duties owed. The conduct described in this Paragraph is the “Covered Conduct” for purposes of this Stipulation;

WHEREAS, the Government filed a Notice of Election to Intervene on March 6, 2019, and a Complaint-In-Intervention on April 22, 2019, in the above-referenced *qui tam* action (“Government Complaint”), in which it is asserting claims against Defendants under the FCA and common law for the Covered Conduct;

WHEREAS, a criminal indictment was filed against Bailey on June 5, 2019, for some of the conduct at issue in the Government Complaint. *United States v. Bailey*, 19 Cr. 412 (WHP). On January 15, 2020, Bailey pleaded guilty to Count One of the Indictment (Conspiracy to Commit

Wire Fraud). On December 22, 2020, Bailey was sentenced to six months incarceration and a period of three years supervised release, and was ordered to pay \$1,667,661 in forfeiture and \$1,667,661 in restitution. *See id.*, Dkt No. 62. The Consent Order of Restitution in the criminal matter provides that if a civil settlement is reached for the same underlying conduct the civil recovery will be credited against Bailey's restitution obligation. *See id.*, Dkt. No. 63.

WHEREAS, the Parties have, through this Stipulation, reached a mutually agreeable resolution addressing the claims asserted against Defendants in the Government Complaint and the Relator Complaint, for the Covered Conduct;

NOW, THEREFORE, upon the Parties' agreement IT IS HEREBY ORDERED that:

TERMS AND CONDITIONS

1. The Parties agree that this Court has subject matter jurisdiction over this action and consent to this Court's exercise of personal jurisdiction over each of them.
2. Defendants admit, acknowledge, and accept responsibility for the following conduct (the "Admitted Conduct"):
 - a. During the Covered Period, Defendants Stargate and Rivstar engaged in the business of importing clothing that is manufactured, marketed, and sold to end customers located in the United States. Throughout this time period, Rivstar was operated as a division of Stargate.
 - b. During the Covered Period, Bailey was the president and CEO of Stargate, and during this time period he directed its purchasing and importing operations. From the start of the covered period until March 2011, he was also the sole owner of Stargate.

- c. From approximately 2009 until at least the end of the Covered Period, Bailey was the president and CEO of Rivstar, and during this time period he directed its purchasing and importing operations. He acquired Rivstar in approximately 2009 and was its majority owner from that time until March 2011.
- d. On approximately March 24, 2011, Bailey sold his shares in Stargate and Rivstar to the Stargate ESOP, which currently owns the companies.

Stargate Conduct

- e. During the Covered Period, Stargate's primary supplier was Taizhou Jiali Garments Co. Ltd. and its affiliated manufacturers (collectively, "Taizhou"), which are all located in China. At the direction of Bailey, Stargate engaged in two different fraudulent schemes that involved the preparation and use of false and inaccurate invoices to underreport the actual value of goods imported from Taizhou in order to avoid paying the customs duties due. Bailey knew that this conduct was wrong and in violation of customs laws.
- f. As part of the first scheme, from 2007 through 2010, at Bailey's direction, Taizhou provided Stargate with two sets of invoices for each shipment of goods. One invoice, referred to in email communications as the "pay by" invoice, reflected the actual price paid by Stargate for the goods. The second invoice reflected a fake, lower price for the goods and was the invoice that Stargate presented to CBP through its customs broker. Stargate, at the

- direction of Bailey, routinely declared this false, lower value on CBP entry forms in order to pay lower customs duties on goods imported from Taizhou.
- g. Beginning around 2010 and continuing through at least 2015, Bailey and Stargate engaged in a second scheme. At Bailey's direction, Taizhou provided two separate sets of invoices for a given shipment that together reflected the true price Stargate actually paid for the goods. The first invoice, typically entitled the "commercial invoice," described the goods purchased, and was submitted to CBP by Stargate's customs broker. The second invoice purported to reflect amounts paid by Stargate for "sample" goods and was not submitted to CBP. The "sample" invoice was not, in fact, for samples actually purchased by Stargate. Rather, Stargate used the "sample" invoice to make an additional payment to Taizhou for the goods purchased by Stargate that were described in the "commercial invoice," while hiding the full value of those goods from CBP. Stargate, at the direction of Bailey, routinely declared only the values recorded on the "commercial invoices," which were less than the full price paid for the goods, on CBP entry forms in order to pay lower customs duties on goods imported from Taizhou.
- h. During the Covered Period, Stargate also imported goods that it purchased from Tex-Prime International, Ltd., and its affiliated manufacturers (collectively "Tex-Prime"), which are located in China. Beginning in at least 2004 and continuing through 2014, Stargate, at the direction of Bailey, also engaged in two different fraudulent schemes that involved the preparation

and use of false and inaccurate invoices to underreport the actual value of goods imported from Tex-Prime in order to avoid paying the customs duties due.

- i. The first scheme involved Tex-Prime providing two nearly identical invoices for each shipment that differed only in the stated price. The first invoice reflected the amount that Stargate actually paid for the imported goods. The second invoice (frequently identified by a “C” suffix following the invoice number, or the term “Custom” following the invoice number in the file name), reflected a false and inaccurate lower price and was the invoice that that Stargate submitted to CBP through Stargate’s customs broker. Stargate, at the direction of Bailey, routinely declared the values recorded on this second, false invoice on CBP entry forms in order to pay lower customs duties on goods imported from Tex-Prime.
- j. The second scheme also involved Tex-Prime providing two invoices. In this scheme, the two invoices together reflected the actual price paid by Stargate for the shipment. The first invoice, entitled a “commercial invoice,” described the goods purchased and was submitted to CBP by Stargate’s customs broker. The second invoice, entitled a “statement,” purported to be an invoice for accessories charges, commissions, testing charges, or samples. This second invoice was not submitted to CBP and in reality reflected an additional payment made by Stargate to Tex-Prime for the same shipment. Stargate, at the direction of Bailey, routinely declared only the values

recorded on the “commercial invoices,” which were less than the full price paid for the goods, on CBP entry forms in order to pay lower customs duties on goods imported from Tex-Prime.

- k. Through the practices described in subparagraphs (e) through (j) above, Stargate misrepresented the value of the goods it purchased and imported into the United States. Stargate and Bailey were aware at all times that the reported information was incorrect and grossly understated the actual value of the imported goods, but continued to make the incorrect entries in order to reduce the amount of duties owed. As a result of their conduct, Stargate and Bailey underpaid customs duties that were due and owing to the United States.

Rivstar Conduct

- l. During the Covered Period, Defendant Rivstar imported goods purchased from Pacific Potential Trading Co., Ltd., and its affiliated entities (together, “Pacific Potential”), as well as from Dongguan Bestsign and Trading Co., Ltd., and its affiliated entities (together, “Bestsign”), all of which are located in China.
- m. During the Covered Period, at Rivstar’s request and Bailey’s direction, Pacific Potential and Bestsign provided two sets of invoices for each shipment imported into the United States by Rivstar. The first invoice described the goods imported and was submitted to CBP by Rivstar’s customs broker. The price reflected on the invoices declared to Customs did

not reflect the full price Rivstar paid for the merchandise. The second invoice purported to be for “testing costs” relating to the imported goods and was not submitted to CBP. Together, the two invoices reflected the true total price that Rivstar paid for the goods; Rivstar, however, did not declare the amount reflected on the invoice for “testing costs” to CBP. For the most part, the amounts reflected on the invoice for “testing costs” were not for actual testing, but instead reflected an additional payment made by Rivstar to Pacific Potential and Bestsign for the same shipment that was not declared to CBP. To the extent that any such payments actually related to testing costs, such charges were still dutiable and should have been declared to CBP.

- n. Through these practices, Rivstar at Bailey’s direction misrepresented the value of the goods it purchased and imported into the United States. Rivstar and Bailey were aware at all times that the reported information was incorrect and grossly understated the actual value of the imported goods, but continued to make the incorrect entries in order to reduce the amount of duties owed. As a result of their conduct, Rivstar and Bailey underpaid customs duties that were due and owing to the United States.

3. Bailey shall pay to the Government within fourteen (14) business days of the Effective Date (defined below in Paragraph 30) the sum of \$3,200,000 plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021, to the date of the payment (the “Bailey Settlement Amount”) in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York. Of

the Bailey Settlement Amount, \$1,600,000 plus applicable interest constitutes restitution to the United States. Bailey agrees that he shall not seek indemnification from any source with respect to any portion of the Settlement Amount.

4. Stargate, Rivstar and the Stargate ESOP shall together pay to the Government the sum of \$2,800,000 plus applicable interest (the “Stargate ESOP Settlement Amount”) to be paid in seven installments according to the schedule set forth below. Stargate, Rivstar and the Stargate ESOP shall make the below-referenced payments in accordance with instructions to be provided by the Financial Litigation Unit of the United States Attorney’s Office for the Southern District of New York. Of the Stargate ESOP Settlement Amount, \$1,400,000 plus applicable interest constitutes restitution to the United States.

- a. Within fourteen (14) business days of the Effective Date (defined below in Paragraph 30), the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.
- b. On or before June 1, 2022, the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.
- c. On or before December 1, 2022, the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.

- d. On or before June 1, 2023, the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.
- e. On or before December 1, 2023, the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.
- f. On or before June 1, 2024, the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.
- g. On or before December 1, 2024, the Stargate ESOP shall pay the Government the sum of \$400,000, plus interest which shall be compounded annually at a rate of 1.5% accruing from June 11, 2021.

5. Stargate, Rivstar and the Stargate ESOP shall execute and agree to the entry of a consent judgment in favor of the Government and against Stargate, Rivstar and the Stargate ESOP in the amount of \$2,800,000, a copy of which is attached hereto as Exhibit A (the “Stargate ESOP Consent Judgment”). The Government may use the Stargate ESOP Consent Judgment to obtain a security interest in any asset or property of the Stargate ESOP but shall not engage in other collection activity with respect to the Stargate ESOP Consent Judgment so long as the Stargate, Rivstar and the Stargate ESOP fully comply with the payment schedule set forth in Paragraph 4 above. Should Stargate, Rivstar and Stargate ESOP comply fully with the payment schedule set forth in Paragraph 4 above as well as the other terms of this Stipulation, the Stargate ESOP Consent Judgment shall be deemed to be satisfied in full and, upon Stargate, Rivstar and the Stargate

ESOP's request, the Government shall file with the Clerk of the Court and deliver to Stargate, Rivstar and Stargate ESOP a Full Satisfaction of Judgment. In the event that Stargate, Rivstar and the Stargate ESOP fully pays the ESOP Settlement Amount faster than as provided in the payment schedule set forth in Paragraph 4 above, and fully complies with all other terms of the Stipulation, the Stargate ESOP Consent Judgment shall be deemed to be satisfied in full and, upon Stargate, Rivstar and the Stargate ESOP's request, the Government shall file with the Clerk of the Court and deliver to Stargate, Rivstar and the Stargate ESOP a Full Satisfaction of Judgment. Should Stargate, Rivstar and the Stargate ESOP fail to comply fully with the payment schedule set forth in Paragraph 4 above or any other term of this Stipulation, Stargate, Rivstar and the Stargate ESOP shall be in default of this Stipulation, in which case the Government may take any of the actions set forth in Paragraph 16 below.

6. Defendants agree to the following:

- a. In the event that Defendants or any of their successors, heirs, assigns, and other agents enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States, Defendants and any of their successors, heirs, assigns, and other agents shall fully comply with the substantive and procedural requirements of the Tariff Act related to the ascertainment, collection, and recovery of duties, 19 U.S.C. § 1481 *et seq.*, and the applicable regulations issued at 19 C.F.R. Part 141 and Part 142, and agree to accurately declare the value of the merchandise in accordance with 19 U.S.C. § 1401a. In the event that Defendants or any of their successors, heirs, assigns, and other agents seek to utilize a subsidiary or any other

related entity as importer of record of merchandise into the United States, Defendants shall ensure full compliance with the substantive and procedural requirements of the Tariff Act related to the ascertainment, collection, and recovery of duties, 19 U.S.C. § 1481 *et seq.*, and the applicable regulations issued at 19 C.F.R. Part 141 and Part 142, and that the merchandise is accurately valued in accordance with 19 U.S.C. § 1401a.

b. Defendants agree to develop and implement, within 60 days of the Effective Date, a written customs compliance policy (the “Policy”). Defendants shall submit a draft of the Policy to CBP for review within 30 days of the Effective Date, and the Policy shall be subject to CBP’s approval. Defendants further agree that, for a period of five years, on the anniversary of the Effective Date, they will provide CBP a letter signed by the CEO summarizing the implementation of, and all actions taken in furtherance of and any modifications to, the Policy during the prior year. In this annual submission, Defendants will also provide the following information related to all payments made for samples and testing during the prior year:

- (1) The date, payment amount and associated invoice number(s) and entry number(s) of each payment;
- (2) The quantity and unit price paid for each shipment of samples;
- (3) The entity to which payments for testing were made, and whether such entity is a manufacturer or testing company; and

- (4) To the extent payments for testing relate to more than one shipment, the amounts associated with each shipment.
- c. Defendants agree to appoint one management employee to 1) update the Policy as needed; 2) distribute the Policy at the time of its implementation, and thereafter at least annually, to all employees who conduct any facet of customs business or customs-related operations on behalf of Defendants and/or communicate with suppliers of foreign-made garments, and to also distribute the policy to all new employees whose responsibilities are anticipated to include conducting any facet of customs business or customs-related operations on behalf of Defendants and/or communicating with suppliers of foreign-made garments, for review and acknowledgement at the time of hiring; and 3) respond to questions regarding the Policy from any employee, supplier, or other third party. The designated employee shall have a direct reporting line to Defendants' CEO or President regarding all matters related to the Policy.
- d. The Policy will include provisions reasonably designed to ensure Defendants' full compliance with applicable customs laws and regulations. The following provisions in subparagraphs (i) through (iv) are among those that will be included in the Policy for this purpose.
- (1) The Policy will require Defendants to distribute to suppliers of foreign-made garments acquired by Defendants an acknowledgment form indicating that the supplier acknowledges that all import

activity in connection with the sale of the merchandise to Defendants will be in full compliance with applicable customs laws and regulations. The Policy also will also state that, if Defendants come to learn that a supplier is knowingly violating the customs laws, Defendants will cease doing business with the supplier and report the conduct to CBP.

- (2) The Policy will include instructions to Defendants' employees for identifying red flags for customs fraud, both internal and external, and will establish a duty to report any such red flags to Defendants' management, or directly to CBP should Defendants' management be engaged in such customs fraud.
- (3) In the event that Defendants, after a reasonable investigation, conclude that any red flags of customs fraud exist with regard to their interactions with a supplier, Defendants will promptly request explanatory information from the supplier regarding the transaction. If the supplier fails to provide the requested information within 30 days of the request, the Defendants shall cease placing new orders with that supplier. If the information submitted by the supplier to Defendants indicates that the supplier intends to make false statements to CBP or otherwise engage in customs fraud, Defendants shall cease placing new orders with that supplier and shall report the conduct to CBP.

- (4) Defendants will maintain, or utilize the services of a third party to maintain, for a period of not less than five (5) years, reports or documentation reflecting their efforts to comply with the requirements in each of these sub-paragraphs
- e. The obligations of this paragraph and its subparts shall apply to Defendants, their successors, heirs, assigns, and other agents, and any businesses owned or operated in whole or in part by Defendants for the five years following the Effective Date. For the avoidance of any doubt, the obligations of this paragraph and its subparts shall apply to Excel Apparel Corp., or any other corporate name under which Stargate operates; Bailey to the extent he, or any business he owns or operates in whole or part, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States; and Rivstar to the extent it resumes operations, whether under the same or other corporate name, and introduces, or attempts to enter or introduce any merchandise into the commerce of the United States.
- f. The reports and notices to CBP required under this paragraph and its subparts, shall be submitted to:

Suzana Mikulka
Supervisory Import Specialist
U.S. Customs and Border Protection
Apparel, Footwear, & Textile Center, Validation and Compliance
Team 044-1
1100 Raymond Blvd.
Newark, NJ 07102
Tele: 973-368-6851
suzana.mikulka@cbp.dhs.gov

7. Defendants and the Stargate ESOP agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation. Upon reasonable notice, Defendants and the Stargate ESOP shall encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall use their 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. Defendants and the Stargate ESOP further agree 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 they have undertaken, or that has been performed by another on their behalf.

8. Subject to the exceptions in Paragraph 14 (concerning reserved claims) below and subject to Paragraph 15 (concerning default), and Paragraph 20 (concerning bankruptcy proceedings) below, and conditioned on Bailey's full compliance with the terms of this Stipulation, including full payment of the Bailey Settlement Amount to the United States pursuant to Paragraphs 3 above, the United States releases Bailey from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment.

9. Subject to the exceptions in Paragraph 14 (concerning reserved claims) below and subject to Paragraph 16 (concerning default), Paragraph 20 (concerning bankruptcy proceedings) below, and Paragraph 21 (concerning disclosure of financial information) below, and conditioned on Stargate, Rivstar and the Stargate ESOP's full compliance with the terms of this Stipulation,

including full payment of the Stargate ESOP Settlement Amount to the United States pursuant to Paragraphs 4 above, the United States releases Stargate, Rivstar and the Stargate ESOP, including their subsidiaries and corporate predecessors, successors and assigns, from any civil or administrative monetary claim that the United States has for the Covered Conduct under the FCA, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and the common law theories of fraud, payment by mistake, and unjust enrichment. For avoidance of doubt, this Stipulation does not release any current or former officer, director, employee, or agent of Stargate, Rivstar or the Stargate ESOP from liability of any kind, other than Bailey.

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

11. In consideration of the obligations of Bailey in this Agreement, conditioned upon the full payment by Bailey of the Bailey Settlement Amount, the Relator, for himself, and for his heirs, personal representatives, legal representatives, successors, attorneys, agents, assigns, transferees, executors, representatives, and all others persons, firms, partnerships, or corporations with whom Relator has been or may later be affiliated (collectively, "Relator Releasers"), fully and finally releases Bailey, for himself and his current and former successors, assigns, agents, related companies (e.g., parents, affiliates, and subsidiaries), and present or former owners,

directors, officers, members, partners and employees (collectively, “Bailey Releasees”) from any claims, rights, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of any nature, (including but not limited to claims for attorneys’ fees, costs, and expenses of every kind and however denominated), whether known or unknown, that Relator, for himself and Relator Releasers, had, has, or may have had, whether known or unknown, contingent or absolute, for damages, injunctive relief, or any other remedy, whether in violation of any federal, state, or local law, contract duty, standard of care, tort, right, common law, or other source of obligation or theory or recovery that Relator, for himself and Relator Releasers, may have, may gain, or may assert against Bailey Releasees including, but not limited to, arising out of, resulting from, or in connection in any way with the employment or the termination of said employment with Defendants; provided, however, that nothing in this Agreement shall (a) preclude Relator from seeking to recover Relator’s expenses or attorneys’ fees and costs from Defendants, pursuant to 31 U.S.C. 3730(d)(1). Relator further acknowledges that Bailey has no obligation to Relator or to rehire Relator, or to deal with Relator in any respect, in any location, office or place of business with regard to employment or potential employment and such forbearance to seek further employment is purely contractual, and is in no way involuntary, discriminatory, or retaliatory.

12. In consideration of the obligations of Stargate, Rivstar and the Stargate ESOP in this Agreement, conditioned upon the full payment by Stargate, Rivstar and the Stargate ESOP of the Stargate ESOP Settlement Amount, Relator, for himself, and for the Relator Releasers, fully and finally releases Stargate, Rivstar and the Stargate ESOP, for themselves and their current and former successors, assigns, agents, related companies (e.g., parents, affiliates, and subsidiaries),

and present or former owners, directors, officers, members, partners and employees (collectively, “Stargate Releasees”) from any claims, rights, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions and causes of action of any nature, (including but not limited to claims for attorneys’ fees, costs, and expenses of every kind and however denominated), whether known or unknown, that Relator, for himself and Relator Releasers, had, has, or may have had, whether known or unknown, contingent or absolute, for damages, injunctive relief, or any other remedy, whether in violation of any federal, state, or local law, contract duty, standard of care, tort, right, common law, or other source of obligation or theory or recovery that Relator, for himself and Relator Releasers, may have, may gain, or may assert against Stargate Releasees including, but not limited to, arising out of, resulting from, or in connection in any way with the employment or the termination of said employment with Defendants; provided, however, that nothing in this Agreement shall (a) preclude Relator from seeking to recover Relator’s expenses or attorneys’ fees and costs from Defendants, pursuant to 31 U.S.C. 3730(d)(1). Relator further acknowledges that Stargate, Rivstar and the Stargate ESOP have no obligation to Relator or to rehire Relator, or to deal with Relator in any respect, in any location, office or place of business with regard to employment or potential employment and such forbearance to seek further employment is purely contractual, and is in no way involuntary, discriminatory, or retaliatory.

13. In consideration of the obligations of Relator in this Agreement, Defendants, for themselves and their current and former successors, assigns, agents, related companies (e.g., parents, affiliates, and subsidiaries), and present or former owners, directors, officers, members, partners and employees (collectively, “Defendant Releasers”), fully and finally release Relator for himself, and for his heirs, personal representatives, legal representatives, successors, attorneys,

agents, assigns, transferees, executors, representatives, and all others persons, firms, partnerships, or corporations with whom Relator has been or may later be affiliated (collectively, “Relator Releasees”) from any claims that Defendants or Defendant Releasers have asserted, could have asserted, or may assert in the future, whether known or unknown, contingent or absolute, for damages, injunctive relief, or any other remedy, whether in violation of any federal, state, or local law, contract duty, standard of care, tort, right, common law, or other source of obligation or theory or recovery that Defendants, for themselves and Defendant Releasers, may have, may gain, or may assert against Relator Releasees.

14. Notwithstanding the releases given in Paragraphs 11 and 12 above, or any other term of this Stipulation, the following claims of the Government are specifically reserved and are not released by this Stipulation:

- a. any liability arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;
- c. except as explicitly stated in this Stipulation, any administrative liability or enforcement right, including but not limited to 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 Stipulation; and
- f. any liability of individuals, other than Bailey.

15. Bailey shall be in default of this Stipulation if Bailey fails to make the required payment set forth in Paragraphs 3 above on or before the due date for such payment, or if Bailey fails to comply materially with any other term of this Stipulation that applies to him (“Default”). The Government will provide a written Notice of Default to Bailey of any Default in the manner set forth in Paragraph 33 below. Bailey shall then have an opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due and paying any additional interest accruing under the Stipulation up to the date of payment. If Bailey fails to cure the Default within seven (7) calendar days of receiving the Notice of Default, and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Bailey Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of an Uncured Default, Bailey shall agree to the entry of a consent judgment in favor of the United States against Bailey in the amount of the Bailey Settlement Amount as attached hereto as Exhibit B. Bailey also agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Bailey in the Government Complaint, or bring any civil and/or administrative claim, action, or proceeding against Bailey for the claims that would otherwise be covered by the releases provided in Paragraph 8 above, with any recovery reduced by the amount of any payments previously made by Bailey to the United States under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Government Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Bailey by any

department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Bailey agrees immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, Bailey waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the United States against Bailey within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on November 12, 2014. Bailey agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

16. Stargate, Rivstar and the Stargate ESOP shall be in default of this Stipulation if they fail to make the required payments set forth in Paragraphs 4 above on or before the due dates for such payment, or if Stargate, Rivstar and the Stargate ESOP fail to comply materially with any other term of this Stipulation that applies to them ("Default"). The Government will provide a written Notice of Default to Stargate, Rivstar and the Stargate ESOP of any Default in the manner set forth in Paragraph 33 below. Stargate, Rivstar and the Stargate ESOP shall then have an

opportunity to cure the Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due and paying any additional interest accruing under the Stipulation up to the date of payment. If Stargate, Rivstar and the Stargate ESOP fail to cure the Default within seven (7) calendar days of receiving the Notice of Default, and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Stargate ESOP Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance). In the event of an Uncured Default, Stargate, Rivstar and the Stargate ESOP shall agree to the entry of a consent judgment in favor of the United States against Stargate, Rivstar and the Stargate ESOP in the amount of the Stargate ESOP Settlement Amount as attached hereto as Exhibit A. Stargate, Rivstar and the Stargate ESOP also agree that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Stipulation, and reinstate the claims asserted against Stargate and Rivstar in the Government Complaint, or bring any civil and/or administrative claim, action, or proceeding against Stargate, Rivstar and the Stargate ESOP for the claims that would otherwise be covered by the releases provided in Paragraph 9 above, with any recovery reduced by the amount of any payments previously made by Stargate, Rivstar and the Stargate ESOP to the United States under this Stipulation; (ii) take any action to enforce this Stipulation in a new action or by reinstating the Government Complaint; (iii) offset the remaining unpaid balance from any amounts due and owing to Stargate, Rivstar and the Stargate ESOP by any department, agency, or agent of the United States at the time of Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this

Stipulation, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Stargate, Rivstar and the Stargate ESOP agree immediately to pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, Stargate, Rivstar and the Stargate ESOP waive and agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that (i) are filed by the United States against Stargate, Rivstar and the Stargate ESOP within 120 days of written notification that this Stipulation has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on November 12, 2014. Stargate, Rivstar and the Stargate ESOP agree not to contest any offset, recoupment, and /or collection action undertaken by the United States pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States.

17. Defendants, having truthfully admitted to the Admitted Conduct set forth in Paragraph 2 hereof, agree they shall not, through their attorneys, agents, officers, or employees, make any public statement, including but not limited to, any statement in a press release, social media forum, or website, that contradicts or is inconsistent with the Admitted Conduct or suggests that the Admitted Conduct is not wrongful (a "Contradictory Statement"). Any Contradictory Statement by Defendants, their attorneys, agents, officers, or employees, shall constitute a violation of this Stipulation, thereby authorizing the Government to pursue any of the remedies set

forth in Paragraphs 15 and 16 hereof, or seek other appropriate relief from the Court. Before pursuing any remedy, the Government shall notify Defendants that it has determined that Defendants have made a Contradictory Statement. Upon receiving notice from the Government, Defendants may cure the violation by repudiating the Contradictory Statement in a press release or other public statement within four business days. If Defendants learn of a potential Contradictory Statement by their attorneys, agents, officers, or employees, Defendants must notify the Government of the statement within 24 hours. The decision as to whether any statement constitutes a Contradictory Statement or will be imputed to Defendants for the purpose of this Stipulation, or whether Defendants adequately repudiated a Contradictory Statement to cure a violation of this Stipulation, shall be within the sole discretion of the Government. Consistent with this provision, Defendants may raise defenses and/or assert affirmative claims or defenses in any proceeding brought by private and/or public parties, so long as doing so would not contradict or be inconsistent with the Admitted Conduct.

18. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Stipulation; Relator agrees and confirms that the terms of this Stipulation are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

19. Defendants waive and shall not assert any defenses Defendants 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 Stipulation bars a remedy sought in such criminal prosecution or administrative action.

20. In exchange for valuable consideration provided in this Stipulation, Defendants and the Stargate ESOP acknowledge the following:

- a. Defendants and the Stargate ESOP have reviewed their financial situations and warrant that they are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.
- b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Defendants and the Stargate ESOP, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.
- c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.
- d. The Parties do not intend to hinder, delay, or defraud any entity to which Defendants or the Stargate ESOP were or became indebted on or after the date of any transfer contemplated in this Stipulation, within the meaning of 11 U.S.C. § 548(a)(1).
- e. If Defendants' or the Stargate ESOP's obligations under this Stipulation are avoided for any reason (including but not limited to through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the

Settlement Amount is paid in full, Defendants, the Stargate ESOP or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Defendants' or the Stargate ESOP's debts, or to adjudicate Defendants or the Stargate ESOP as bankrupt or insolvent, or seeking appointment of a receiver, trustee, custodian, or other similar official for Defendants or the Stargate ESOP or for all or any substantial part of Defendants' or the Stargate ESOP's assets:

- (1) the United States may rescind the releases in this Stipulation and bring any civil and/or administrative claim, action, or proceeding against Defendants or the Stargate ESOP for the claims that would otherwise be covered by the releases provided in Paragraphs 11 and 12 above;
- (2) the United States has an undisputed, noncontingent, and liquidated allowed claim against Defendant Bailey in the amount of \$3,200,00 and against Defendants Stargate and Rivstar and the Stargate ESOP in the amount of \$2,800,000, less any payments received pursuant to the Stipulation, provided, however, that such payments are not otherwise avoided and recovered from the United States by Defendants, the Stargate ESOP, a receiver, trustee, custodian, or other similar official for Defendants or the Stargate ESOP; and
- (3) if any payments are avoided and recovered by Defendants, the Stargate ESOP, a receiver, trustee, custodian, or similar official for Defendants or

the Stargate ESOP, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return any portions of such payments already paid by the United States to Relator.

- f. Defendants and the Stargate ESOP agree that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17(e) above is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Defendants and the Stargate ESOP shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Defendants and the Stargate ESOP waive and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Defendants and the Stargate ESOP that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on November 12, 2014.

21. Stargate, Rivstar and the Stargate ESOP have provided sworn financial disclosures and supporting documents ("Financial Disclosures") to the United States and the United States has relied on the accuracy and completeness of those Financial Disclosures in reaching this Stipulation. Stargate, Rivstar and the Stargate ESOP warrant that the Financial Disclosures are complete, accurate, and current. If the United States learns of asset(s) in which Stargate, Rivstar or the

Stargate ESOP had an interest at the time of the execution of this Stipulation that were not disclosed in the Financial Disclosures, or if the United States learns of any false statement or misrepresentation by Stargate, Rivstar and the Stargate ESOP on, or in connection with, the Financial Disclosures, and if such nondisclosure, false statement, or misrepresentation changes the estimated net worth of Stargate, Rivstar and the Stargate ESOP as reflected in the Financial Disclosures by \$140,000 or more, the United States may at its option: (a) rescind this Stipulation and reinstate its lawsuit based on the Covered Conduct, or (b) let the Stipulation stand and collect the full ESOP Settlement Amount plus one hundred percent (100%) of the net value of the previously undisclosed assets. Stargate, Rivstar and the Stargate ESOP agree not to contest any collection action undertaken by the United States pursuant to this provision, and agree that they will immediately pay the United States the greater of (i) a ten-percent (10%) surcharge of the amount collected in the collection action, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States pursuant to this paragraph rescinds this Stipulation, Stargate, Rivstar and the Stargate ESOP waive and agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 120 calendar days of written notification to Stargate, Rivstar and the Stargate ESOP that this Stipulation has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on November 12, 2014.

22. Defendants and the Stargate ESOP agree 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 Defendants, the

Stargate ESOP and their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Stipulation and any related plea agreement;
- (2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Stipulation;
- (3) Defendants' and the Stargate ESOP'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 Stipulation (including attorney's fees);
- (4) the negotiation and performance of this Stipulation and any plea agreement;
- (5) the payment Defendants or the Stargate ESOP make to the United States pursuant to this Agreement and any payments that Defendants or the Stargate ESOP 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 Defendants and the Stargate ESOP, and Defendants and the Stargate ESOP 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 Stipulation, Defendants and the Stargate ESOP shall identify and repay by adjustment to future claims for payment or

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

23. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity except as otherwise provided herein.

24. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation; provided, however, nothing in this Stipulation shall preclude Relator from seeking to recover his expenses or attorneys' fees and costs from Defendants and/or the Stargate ESOP, pursuant to 31 U.S.C. § 3730(d).

25. Any failure by the Government to insist upon the full or material performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions

hereof, and the Government, notwithstanding that failure, shall have the right thereafter to insist upon the full or material performance of any and all of the provisions of this Stipulation.

26. This Stipulation is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York.

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

28. This Stipulation constitutes the complete agreement between the Parties with respect to the subject matter hereof. This Stipulation may not be amended except by written consent of the Parties. No prior agreements, oral representations or statements shall be considered part of this Stipulation.

29. The undersigned counsel and other signatories represent and warrant that they are fully authorized to execute this Stipulation on behalf of the persons and the entities indicated below.

30. This Stipulation is binding on Defendants' and the Stargate ESOP's successors, transferees, heirs, and assigns.

31. This Stipulation is binding on Relator's successors, transferees, heirs, and assigns.

32. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Stipulation. E-mails that attach signatures in PDF form or facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

33. Any notice pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be delivered by hand, express courier, or e-mail transmission followed by postage-prepaid mail, and shall be addressed as follows:

TO THE UNITED STATES:

Dominika Tarczynska
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, New York 10007
Email: dominika.tarczynska@usdoj.gov

TO BAILEY:

Michael Sardar
Kostelanetz & Fink, LLP
Seven World Trade Center
250 Greenwich Street, 34th Floor
New York, New York 10007
Email: msardar@kflaw.com

TO STARGATE, RIVSTAR AND THE STARGATE ESOP:

Steve A. Goodman
Scott D. Spiegel
Lynch, Cox, Gilman & Goodman, PSC
500 West Jefferson Street, Suite 2100
Louisville, KY 40202
Email: sgoodman@lcgandm.com
sspiegel@lcgandm.com

TO RELATOR:

Timothy J. McInnis
McInnis Law
521 5th Ave
New York, NY 10175
Email: tmcinnis@McInnis-Law.com

34. The effective date of this Stipulation is the date upon which the Stipulation is approved by the Court (the "Effective Date").

Agreed to by:

THE UNITED STATES OF AMERICA

Dated: New York, New York
July 26, 2021

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By:

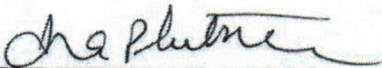


Dominika Tarczynska
Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
Tel.: (212) 637-2748
Fax: (212) 637-2686

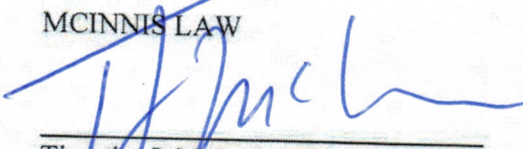
Attorney for the United States of America

RELATOR

Dated: Commeck, New York
July 24, 2021

By: 
Ira Plutner
Relator

Dated: New York, New York
July 25, 2021

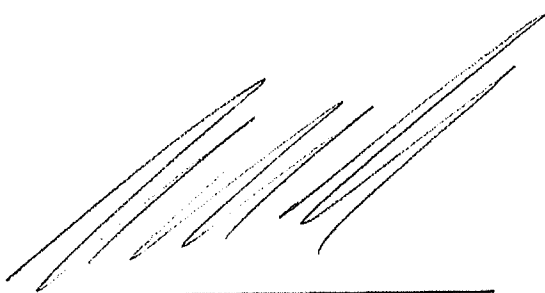
MCINNIS LAW
By: 
Timothy J. McInnis, Esq.
521 5th Avenue, 17th Floor
New York, NY 10175-0038
Tel. (212) 292-4573
Fax (212) 292-4574
tmcinnis@mcinnis-law.com

Attorney for Relator

DEFENDANT BAILEY

Dated: New York, New York
July 26, 2021

By:



Joseph Bailey

Dated: New York, New York
July 26 2021

KOSTELANETZ & FINK, LLP

By:




Michael Sardar
Seven World Trade Center
250 Greenwich Street, 34th Floor
New York, New York 10007

Attorneys for Defendant Joseph Bailey

**EXCEL APPAREL CORP. (F/K/A STARGATE APPAREL INC.), RIVSTAR
AND THE STARGATE ESOP**

Dated: New York, New York
July __, 2021

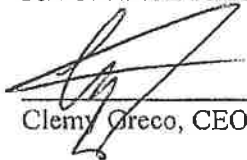
EXCEL APPAREL CORP. (f/k/a
STARGATE APPAREL, INC.)

By: 

Clemy Greco, CEO

Dated: New York, New York
July __, 2021

RIVSTAR APPAREL, INC.

By: 

Clemy Greco, CEO

Dated: New York, New York
July __, 2021

STARGATE APPAREL, INC. EMPLOYEE
STOCK OWNERSHIP PLAN

By: _____
Michael Miller, Trustee

**EXCEL APPAREL CORP. (F/K/A STARGATE APPAREL INC.), RIVSTAR
AND THE STARGATE ESOP**

Dated: New York, New York
July __, 2021

EXCEL APPAREL CORP. (f/k/a
STARGATE APPAREL, INC.)

By: _____
Clemy Greco, CEO


Dated: New York, New York
July __, 2021

RIVSTAR APPAREL, INC.

By: _____
Clemy Greco, CEO

Dated: New York, New York
July __, 2021

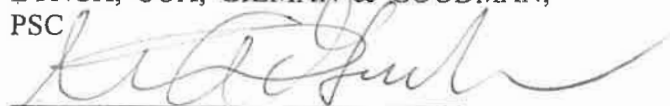
STARGATE APPAREL, INC. EMPLOYEE
STOCK OWNERSHIP PLAN

By: 
Michael Miller, Trustee

Dated: _____,
July __, 2021

LYNCH, COX, GILMAN & GOODMAN,
PSC

By:



Scott Spiegel
Steve Goodman
500 West Jefferson Street, Suite 2100
Louisville, KY 40202

*Attorneys for Excel Apparel Corp. (f/k/a
Stargate Apparel, Inc.), Rivstar Apparel,
Inc., and the Stargate Apparel, Inc. Employee
Stock Ownership Plan*

SO ORDERED:



J. PAUL OETKEN
United States District Judge

Dated: July 28, 2021