

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

_____)	
In the Matters of:)	Docket Number
Trilogy International Associates, Inc.)	15-BIS-0005
William Michael Johnson)	(consolidated)
_____)	
Respondents)	

FINAL DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order (“RDO”) of an Administrative Law Judge (“ALJ”), as further described below.¹

I. Background

On October 2, 2015, the Bureau of Industry and Security (“BIS”) issued a Charging Letter to Respondent Trilogy International Associates, Inc. (“Trilogy International” or “Trilogy”), alleging that Trilogy committed three violations of Section 764.2(a) of the Export Administration Regulations (“EAR” or “Regulations”),² by exporting national-security-

¹ I received the certified record from the ALJ, including the original copy of the RDO, for my review on January 25, 2018. The RDO is dated January 24, 2018. BIS submitted a timely response to the RDO, while Respondent has not filed a response to the RDO.

² The Regulations are codified at 15 C.F.R. Parts 730-774 (2017). The violations charged occurred in 2010. The Regulations governing the violations at issue are found in the 2010 version of the Code of Federal Regulations. The 2017 Regulations govern the procedural aspects of this case.

The Regulations issued pursuant to the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available at <http://uscode.house.gov>) (the “Act” or “EAA”). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2017 (82 Fed. Reg. 39,005 (Aug. 16, 2017)), has continued the

controlled items to Russia without the required BIS licenses. On the same date, BIS also issued a Charging Letter to William Michael Johnson (“Johnson”), Trilogy’s President and General Manager, alleging that Johnson committed three violations of Section 764.2(b) of the Regulations by causing, aiding, and/or abetting Trilogy’s unlawful exports.

The Charging Letter issued against Trilogy (“Trilogy Charging Letter”) included the following specific allegations:

Charges 1-3 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct

1. On or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively, Trilogy International engaged in conduct prohibited by the Regulations by exporting items subject to the Regulations and controlled on national security grounds to Russia without the required BIS export licenses.
2. The items involved were an explosives detector and a total of 115 analog-to-digital converters. The items were classified under Export Control Classification Numbers 1A004 and 3A001, respectively, controlled as indicated above on national security grounds, and valued in total at approximately \$76,035.
3. Each of the items required a license for export to Russia pursuant to Section 742.4 of the Regulations.
4. Trilogy International exported the items to TAIR R&D Co. Ltd. (“TAIR R&D Co.”), a Russian company. TAIR R&D Co. employed Alexander Volkov, who had previously formed Trilogy International along with William Michael Johnson (“Johnson”). At all times pertinent hereto, Johnson was President and General Manager of Trilogy International, directed or controlled its operations, and participated in the export transactions at issue.
5. After receiving requests for the items from TAIR R&D Co., Trilogy International procured the items from suppliers in the U.S. and abroad. Once in possession of the items, Trilogy International issued invoices, signed by Johnson and dated January 20,

Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, et seq. (2012)).

March 4, and April 15, 2010, respectively, to TAIR R&D Co. for the sale and export of the items from the United States to Russia.

6. Trilogy then exported the items from the United States to TAIR R&D Co. in Russia on or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively.
7. As alleged above, each of the national-security-controlled items at issue required a license for export to Russia pursuant to Section 742.4 of the Regulations. However, no license was sought or obtained by Trilogy International in connection with any of the exports at issue.
8. By exporting these items without the required BIS export licenses, Trilogy International committed three violations of Section 764.2(a) of the Regulations.

Trilogy Charging Letter at 1-2.³

The Charging Letter against Johnson (“Johnson Charging Letter”) included the following specific allegations:

Charges 1-3 15 C.F.R. § 764.2(b) – Causing, Aiding, or Abetting a Violation

1. Between on or about January 20, 2010, and May 14, 2010, Johnson caused, aided, and/or abetted three violations of the Regulations, specifically, three exports from the United States to Russia of items subject to the Regulations without the required BIS export licenses.
2. The items involved were an explosives detector and a total of 115 analog-to-digital converters, classified under Export Control Classification Numbers 1A004 and 3A001, respectively, controlled on national security grounds, and valued in total at approximately \$76,035.
3. Each of the items at issue required a BIS license for export to Russia pursuant to Section 742.4 of the Regulations.
4. At all times pertinent hereto, Johnson was President and General Manager of Trilogy International Associates Inc. (“Trilogy International”), of Modesto, California, and directed or controlled Trilogy International’s operations.

³ The Trilogy Charging Letter also includes a Schedule of Violations that provides additional detail concerning the underlying transactions. The Charging Letter, including the Schedule of Violations, will be posted on BIS’s “eFOIA” webpage along with a copy of this Order (and a copy of the RDO).

5. Johnson also participated in and facilitated the transactions at issue, including, inter alia, procuring the items from suppliers after receiving requests from TAIR R&D Co. Ltd. (“TAIR R&D Co.”), a Russian company that employed Alexander Volkov, with whom Johnson had previously formed Trilogy International.
6. Johnson placed orders with U.S. suppliers for the analog-to-digital converters at issue and was listed as the purchaser of those items on supplier invoices dated January 21, 2010, and May 12, 2010, respectively.
7. Johnson also signed Trilogy International invoices dated January 20, March 4, and April 15, 2010, respectively, in connection with the sales and exports to TAIR R&D Co. at issue, and provided these invoices along with the items to a freight forwarder.
8. The items were then shipped on behalf of Trilogy International to TAIR R&D Co. in Russia on or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively.
9. As alleged above, each of the national-security-controlled items at issue required a license for export to Russia pursuant to Section 742.4 of the Regulations. However, no license was sought or obtained by Johnson or Trilogy International in connection with any of the exports at issue.
10. By causing, aiding, and/or abetting the export of these items without the required BIS export licenses, Johnson committed three violations of Section 764.2(b) of the Regulations.

Johnson Charging Letter at 1-2.⁴

On June 17, 2016, Respondent Trilogy and Respondent Johnson (collectively, “Respondents”) filed a joint answer to the Charging Letters, and the proceedings against Trilogy and Johnson were subsequently consolidated.

Following discovery, BIS filed its Motion for Summary Decision pursuant to Section 766.8 of the Regulations on January 13, 2017, as to all charges against Trilogy and all charges against Johnson. On the same date, Respondents filed their Motion for Summary Dismissal as to

⁴ The Johnson Charging Letter, like the Trilogy Charging Letter, also includes a Schedule of Violations that provides additional detail concerning the underlying transactions and that will be included as part of the Charging Letter posted on BIS’s eFOIA webpage. See note 3, *supra*.

all charges against them, relying upon the argument that a third party, the freight forwarder, bore responsibility for the unlicensed exports.

On February 8, 2017, the ALJ issued an “Initial Decision” denying Respondents’ Motion for Summary Dismissal and granting summary decision for BIS on the three Section 764.2(a) unlicensed export charges against Trilogy. However, the ALJ denied summary decision for BIS with respect to the three Section 764.2(b) causing, aiding, or abetting charges against Johnson. The ALJ treated Trilogy and Johnson as a single, collective party and as a result concluded that the Section 764.2(b) charges were “multiplicious” of the underlying Section 764.2(a) unlicensed export charges.

Following opportunity for briefing on sanctions issues, the ALJ issued an “Initial Decision Imposing Sanctions” on April 24, 2017, in which the ALJ also treated Respondents as a single, collective entity or individual, and indicated that a civil penalty of \$100,000 and a seven-year denial of export privileges would be imposed. On April 28, 2017, a “Notice of Errata” issued, signed by a paralegal specialist that was designed to correct the title of the ALJ’s April 24, 2017 decision from “Initial Decision Imposing Sanctions,” to “Recommended Decision Imposing Sanctions,” and to make corresponding changes to some of the text of that decision.

The case was thereafter referred to the Under Secretary’s Office as of May 2, 2017. On May 30, 2017, then-Acting Under Secretary Daniel O. Hill issued an order (“Remand Order”) vacating the Notice of Errata and remanding this consolidated proceeding for the ALJ to, *inter alia*, issue a single RDO in accordance with the provisions of Section 766.17(b)(2) of the Regulations and address all charges on the merits against each of the respondents. In the

Remand Order, the Acting Under Secretary determined that the ALJ had erred in treating the two respondents collectively, and directed that on remand the ALJ treat the respondents as distinct parties and reconsider his denial of summary decision with regard to the Section 764.2(b) charges against Respondent Johnson. In this regard, the Acting Under Secretary determined that it is “well established that a corporate officer can be charged with causing, aiding or abetting the corporation’s underlying violations.” Remand Order, at 2.

On January 24, 2018, after providing the parties opportunity for further briefing and based upon the record before him, the ALJ issued the RDO, in which he concluded that Respondent Trilogy had committed the three violations of Section 764.2(a) of the Regulations alleged in the Trilogy Charging Letter, and that Respondent Johnson committed the three violations of Section 764.2(b) alleged in the Johnson Charging Letter. The ALJ determined that, in accordance with Section 766.8 of the Regulations, BIS established that there are no genuine issues of material fact and that BIS is entitled to summary decision as a matter of law as to all the charges at issue. The ALJ set out detailed findings of undisputed material fact in the RDO regarding each of the charges, RDO, at 5-7, including that “Johnson directed, controlled, and performed Trilogy’s operations at all times relevant to the charges . . . and acted on behalf of Trilogy.” *Id.* at 5, ¶ 3.⁵ In addition to finding that Johnson directed and controlled Trilogy’s

⁵ In connection with transaction at issue in the Charge 1 of the Charging Letters, RDO Finding of Fact No. 12 states that on or about January 23, 2010, “Johnson was the U.S. Principal Party in Interest (“USPPI”)/exporter that exported the E-3500 explosives detector at issue from the United States to Russia.” RDO, at 6, ¶ 12 (footnote omitted; parenthetical in original). After a review of the RDO, I find that the reference to Johnson there, rather than Trilogy, as the USPPI/exporter, clearly was not intended by the ALJ. Throughout the rest of the RDO, the ALJ refers to Trilogy as the USPPI/exporter. *See, e.g.*, RDO, at 10 (“Trilogy, as the USPPI/exporter, had the legal obligation to determine any license requirements and obtain the needed export licenses in connection with each of the exports at issue here.”);

operations, the ALJ also found that Johnson took specific actions in connection with each of the unlawful unlicensed exports, including in connection with procuring the items, preparing and signing documentation for the sale of the items to TAIR R&D Co., and/or providing directions to the freight forwarder regarding the export of the items to Russia. *See id.* at 5-7, ¶¶ 3, 6, 10-11, 14-15, 17-18.

The ALJ determined that Respondents had not provided any evidence showing the existence of any genuine issues of material fact and that Respondents had failed to factually or legally substantiate their argument that it was the freight forwarder, rather than Respondents, that bore responsibility for the unlawful unlicensed exports. RDO, at 8-12. The ALJ rejected Respondents' purported defense, which was based primarily on an unsigned power of attorney form that Respondents asserted authorized the forwarder "to handle necessary export paperwork," RDO, at 10 (quoting, in part, Respondents' Answer), because Trilogy, as the USPPI/exporter, had the legal obligation to determine any license requirements and obtain the necessary licenses in connection with the exports at issue. RDO, at 10 and n. 14 (discussing and quoting, in part, Section 758.3 of the Regulations).

With regard to sanctions, the ALJ recommended that I impose a \$50,000 civil penalty against Trilogy and a \$50,000 civil penalty against Johnson, and that I should also issue denial orders suspending the export privileges of both Respondents for a period of seven years. In

at 11 ("The record is undisputed, Respondent Trilogy sent three shipments . . . [and] Respondent Trilogy violated 15 C.F.R. § 764.2(a) by shipping these materials to Russia on three separate occasions."); *see generally* RDO, at 8-11. Moreover, BIS alleged and submitted evidence to show that Trilogy was the USPPI/exporter for each of the transactions and charges at issue, *see* Charging Letters and BIS's Motion for Summary Decision, and the ALJ found that Trilogy was the USPPI/exporter for the exports at issue in Charges 2 and 3. RDO, at 7, ¶¶ 16 and 19.

making this recommendation, the ALJ reiterated and expanded upon his previous finding, in his April 24, 2017 decision, that Respondents engaged in a willful and reckless course of conduct involving unlicensed exports of national-security-controlled items to TAIR R&D Co. in Russia. RDO, at 13-14; April 24, 2017 Decision at 7-8. “The undisputed facts show Respondents maneuvered to procure national security items and then to export them from the United States, without seeking authorization from BIS or procuring the requisite license. As the April 24, 2017 Order recognizes, Respondents were willful and reckless.” RDO, at 13-14. The ALJ also found that in addition to failing to fulfill their licensing obligations regarding the export of the items at issue to Russia, Respondents also failed to seek pertinent information regarding these export transactions and the foreign parties interested in them. “Moreover, the record shows Respondents failed to learn details related to the financing of the illicit transactions, provided through Trilogy Netherlands, with the ultimate source of the financing being unknown to Respondents.” RDO, at 15 (citing Respondents’ deposition testimony).⁶

The ALJ, in making his sanctions recommendations, also rejected Respondents’ efforts throughout this proceeding to shift responsibility to the freight forwarder. *See* RDO, at 14. The ALJ further found that Respondents generally exhibited a “flippant attitude towards regulatory control” and “have yet to acknowledge the seriousness of the violations nor shown any remorse

⁶ In the deposition testimony cited by the ALJ, Respondents asserted that although they believed that an investor group paid TAIR R&D Co. for the items, they did not know the identity of the investor group. Johnson Deposition Transcript, at page 91, line 5 to page 92, line 10, filed as part of Exhibit 3 to BIS’s Brief on Sanctions dated March 17, 2017. Respondents asserted that after they procured the items, Trilogy Netherlands, a Dutch company, paid for the items that Respondent Trilogy ordered, while Trilogy Netherlands, in turn, received funds from TAIR R&D Co. to pay the manufacturers and suppliers. *See* Exhibit 3 to BIS’s Brief on Sanctions, dated March 17, 2017, at page 94, line 1 to page 95, line 14. Respondents also asserted that they had no role in Trilogy Netherlands. *See id.*

for these failures.” RDO, at 15. The ALJ also saw no evidence that the Respondents have taken any corrective compliance measures or that they possess the ability or willingness to comply with the Regulations. *See id.*

Finally, the ALJ found that BIS precedent supported his recommended sanctions against Respondents. RDO, at 15-16.

II. Review Under Section 766.22

The RDO, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. BIS submitted a timely response to the RDO pursuant to Section 766.22(b). Respondents have not submitted any response to the RDO, nor have they submitted any reply to BIS’s response.

The RDO contains a detailed review of the record relating to both merits and sanctions issues in this case, including in light of the Remand Order. I find that the record amply supports the ALJ’s findings of fact and conclusions of law that Respondent Trilogy committed the three violations of Section 764.2(a) of the Regulations alleged in the Charging Letter issued to Trilogy, and that Respondent Johnson committed the three violations of Section 764.2(b) of the Regulations alleged in the Charging Letter issued to Johnson. The ALJ correctly concluded that BIS is entitled to summary decision pursuant to Section 766.8 of the Regulations as to all of the charges at issue based upon the indisputable evidence of record. In doing so, the ALJ correctly determined that Respondent Trilogy was the USPPPI/exporter and thus had the legal obligation under the Regulations to determine licensing requirements and obtain the necessary licenses for the export transactions at issue, rightly rejecting Respondents’ persistently proffered, but

unsubstantiated, defense that the freight forwarder bore responsibility for the unlawful exports at issue. The ALJ also correctly determined that Respondent Johnson caused, aided, or abetted Trilogy's unlawful exports, finding in that regard that Johnson directed and controlled Trilogy and its operations, and also finding that Johnson took one or more specific actions in connection with each of the exports at issue.

After further consideration of the penalties initially assessed, I find that they are not sufficient considering the serious nature of the violations. Therefore I am modifying both the civil penalty and the denial order. I am modifying the civil penalty assessed against each Respondent from \$50,000 to \$100,000, and adding an additional three years to the seven-year denial order bringing it to ten years. The RDO and the record indicate that Respondents participated in sustained procurement and export activities with at least one known Russian entity regarding national-security-controlled items, while willfully ignoring, or, at best, blinding themselves to their compliance obligations. The RDO and record also show that Respondents have refused to acknowledge their compliance obligations during this proceeding or accept responsibility for their actions despite their clear violations of the Regulations. The ALJ also correctly determined that Respondents' rejection of their export control responsibilities and apparent failure to adopt corrective measures raises additional concerns about their ability and willingness to comply with the Regulations now or in the future. Thus, in sum, given the high degree of culpability exhibited by Respondents' willful and/or reckless conduct, the serious nature of the violations at issue, and the importance of deterring the Respondents and others from violating the Regulations in the future, I agree that the imposition of both preventive relief and

monetary penalties against Respondents are necessary and appropriate to sanction Respondents and prevent and deter future violations of the Regulations. Therefore, I modify the seven-year denial order against each Respondent to ten years, as well as modifying the civil penalty by increasing to \$100,000 per Respondent to reflect seriousness of the conduct at issue as described above.⁷

Accordingly, based on my review of the RDO and entire record, I affirm the findings of fact and conclusions of law in the RDO and modify the recommended sanctions as described above.⁸

ACCORDINGLY, IT IS THEREFORE ORDERED:

FIRST, a civil penalty of \$100,000 shall be assessed against Trilogy International Associates Inc. (“Trilogy”), the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, a civil penalty of \$100,000 shall be assessed against William Michael Johnson (“Johnson”), the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

THIRD, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701-3720E (2000)), the civil penalties owed under this Order accrue interest as more fully described

⁷ The ALJ did not specifically address the terms of the denial orders to be imposed against Respondents. I conclude that the standard denial order found in Supplement No. 1 to Part 764 of the Regulations is appropriate in this situation. Nothing in the RDO suggests that the ALJ intended to recommend a non-standard denial order.

⁸ As noted, *supra*, my review of the RDO indicates that the ALJ clearly intended to indicate in the RDO that Respondent Trilogy was the USPP/ exporter with regard to each of the transactions at issue. See note 5 *supra*. My determination to affirm the findings of fact and conclusions of law is based on this understanding of the RDO.

in the attached Notice, and, if payment is not made by the due date specified herein, the party that fails to make payment will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

FOURTH, for a period of ten years from the date of this Order, Trilogy International Associates, Inc. and William Michael Johnson, both with last known addresses of P.O. Box 342, Altaville, CA 95221 and 552 Lee Lane, Box 342/21, Angels Camp, CA 95222, and when acting for or on their behalf, their successors, assigns, employees, agents, or representatives (each a “Denied Person” and collectively the “Denied Persons”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, license exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person or the Denied Persons by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

SIXTH, this Order shall be served on Respondents Trilogy International Associates, Inc. and William Michael Johnson and on BIS, and shall be published in the *Federal Register*. In addition, the ALJ's Recommended Decision and Order shall be published in the *Federal Register*.

This Order, which constitutes final agency action in this matter, is effective immediately.



MIRA R. RICARDEL
Under Secretary of Commerce
for Industry and Security

Issued this 26th day of February 2018.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

_____)	
In the Matters of:)	Docket Number
)	
Trilogy International Associates, Inc.)	15-BIS-0005
William Michael Johnson)	(consolidated)
)	
Respondents _____)	

**RECOMMENDED DECISION AND ORDER GRANTING
SUMMARY DECISION ON REMAND**

This matter comes before the undersigned administrative law judge (ALJ) pursuant to a remand order issued by the Acting Under Secretary of Commerce for Industry and Security (Under Secretary) on May 30, 2017. The Under Secretary's order vacated in part, affirmed in part, and remanded two rulings issued by the undersigned on February 8, 2017 and April 24, 2017.¹ The remand order primarily directs the ALJ to reconsider its partial denial of the Bureau of Industry and Security's (BIS or Agency) January 13, 2017 Motion for Summary Decision, and orders the ALJ to issue a single Decision and Order in accordance with Section 766.17(b)(2).

As set forth below, upon reconsideration, the undersigned finds there are no genuine issues as to any material facts and BIS is entitled to summary decisions against Trilogy International Associates, Inc. and William Michael Johnson. Therefore, BIS' January 13, 2017 Motion for Summary Decision is **GRANTED**. Furthermore, because this Order Granting Summary Decision disposes of this matter entirely, the undersigned

¹ The Under Secretary's Order affirmed the ALJ's findings of fact and partial issuance of summary decision and instructed the ALJ not to disturb the factual findings made in the ALJ's April 24, 2017 and February 7, 2017 decisions.

issues this Recommended Decision and Order to the Under Secretary as permitted by 15 C.F.R. § 766.8.²

Procedural Background

On October 2, 2015, the Agency filed separate Charging Letters against Respondent Trilogy International Associates, Inc. (Respondent Trilogy) (docket number 15-BIS-0004) and Respondent William Michael Johnson (Respondent Johnson) (docket number 15-BIS-0005).³ Respondent Trilogy's Charging Letter alleges the corporation violated Section 764.2(a) of the Export Administration Regulations (EAR or Regulations) by exporting national-security controlled items to Russia on three separate occasions in 2010, without the requisite BIS licenses.⁴ Respondent Johnson's Charging Letter alleges he violated Section 764(b) of the regulations by aiding and abetting Respondent Trilogy's three unlicensed exports to Russia, in his capacity as president of the corporation.⁵

On December 21, 2015, Respondents filed an e-mail response to the Agency's Charging Letters, but did not address all of the allegations. Subsequently, on June 17, 2016, Respondents filed a lengthy written denial (Answer) alleging the Charging Letters are politically-motivated and that a third-party was responsible for any violations of law or regulation.

² Title 15 C.F.R. § 766.8 permits the ALJ to issue a recommended decision if granting a motion for summary decision.

³ Trilogy International Associates, Inc. was, apparently, a lawfully constituted corporation under the laws of the State of California and the State of Nevada at times relevant to the Complaint. The undersigned ALJ gleans from the discovery that Trilogy is not presently a lawfully constituted corporation in either state. (Response to Interrogatories Nos. 1 – 5).

⁴ Those items consisted of an explosives detector and several analog-to-digital converters; items listed under Agency Export Control Classification as Numbers 1A004 and 3A001, respectively, and controlled for reasons of national security).

⁵ The Charging Letters allege the International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007) and 15 C.F.R. Part 766 allows the imposition of a civil penalty “up to the greater of \$250,000.00 per violation or twice the value of the transaction that is the basis of the violation.” By contrast, the Agency's Motion alleges that 15 C.F.R. § 764.3 allows the imposition of a monetary sanction of up to \$289,238.00 per violation.

The Agency filed a Motion for Summary Decision on January 13, 2017, in accordance with the provisions of 15 C.F.R. §766.8. On the same day, Respondents filed a competing Motion for Summary Dismissal (Cross Motion). Respondents supplemented the Cross Motion with a three-page attachment to an e-mail to the undersigned and the Agency.⁶ On February 1, 2017, the Agency filed its response to the Cross Motion.

On February 8, 2017, the undersigned ALJ issued an Initial Decision, granting in part and denying in part BIS' Motion for Summary Decision.⁷ The February 8, 2017 Order considered the two charging letters (issued separately to Respondents) multiplicitous, and referred to the two Respondents in the collective. Essentially, the ALJ held Respondent Johnson's actions to be those of Respondent Trilogy, and found the Agency could only sanction Respondent Trilogy as a company, not Respondent Johnson as an individual. To this end, the ALJ denied Summary Decision against Respondent Johnson, but granted Summary Decision against Respondent Trilogy. The February 8, 2017 Order directed the parties to submit additional briefing on the appropriate amount of sanctions against Respondent Trilogy.

After receiving the parties' briefs on sanction, the undersigned issued a separate order on April 24, 2017, levying a fine in the amount of \$100,000.00 against Respondent Trilogy and denying Respondent Trilogy's export privileges for a period of seven years. However, the undersigned inadvertently titled the April 24, 2017 Order as an "Initial Decision." To correct the error, among others, the undersigned directed a Notice of Errata be entered on May 10, 2017, which changed the title of the undersigned's decision

⁶ The undersigned considers the attachment as part of the Cross Motion .

⁷ The February 8, 2017 Order denied Respondent's cross Motion for Summary Decision. The Under Secretary's Remand did not disturb the ruling against Respondent, and it is not revisited here. Respondent's request for Summary Decision remains **DENIED**.

from “Initial Decision Imposing Sanctions” to “Recommended Decision Imposing Sanction.”

On May 10, 2017, BIS filed a “Response to Notice of Errata” which asked the Under Secretary to vacate the ALJ’s decisions and remand with instructions. On May 30, 2017, the Under Secretary Vacated the ALJ’s Erratum Order, affirmed the ALJ’s ultimate finding that Respondent Trilogy committed three violations of Section 764.2(a), but reversed the ALJ’s conclusion that the charges against Respondent Trilogy and Respondent Johnson were multiplicitious. The Under Secretary also held “a corporate officer can be charged with causing, aiding or abetting the corporations’ underlying violations.” The remand order instructed the ALJ to treat the charges against Respondent Johnson distinct from those against Respondent Trilogy. Ultimately, the Under Secretary ordered the ALJ to reconsider BIS’ Motion for Summary Decision, but only to the charges against Respondent Johnson. If the ALJ recommended denial of the Summary Decision against Respondent Johnson, the Under Secretary instructed the ALJ to resolve the remaining charges pursuant to Part 766 of the regulations. The Order also required the ALJ to “provide the parties opportunity for briefing, including as to proposed sanctions.”

Pursuant to the Under Secretary’s Order, the undersigned issued an Order on September 12, 2017, directing the parties to submit briefs addressing the appropriate sanction that should be levied against Respondent Johnson. BIS, through counsel, filed its brief concerning a Respondent Johnson sanction on September 25, 2017. To date, Respondents have not filed any reply, nor otherwise complied with the undersigned’s September 12, 2017 Order.

FINDINGS OF FACTS

Upon review of the record, the ALJ finds the following facts undisputed and admitted by Respondents.

1. At all times relevant to this matter, Trilogy International Associates, Inc. ("Trilogy") was a California and Nevada corporation, headquartered in California at William Michael Johnson's personal residence. (Deposition Transcript ("Tr."), at 38; Responses to Interrogatories Nos. 1 and 2).
2. William Michael Johnson ("Johnson") was the president and general manager of Trilogy at all times relevant to the charges in the Complaint. (Response to Interrogatory No. 3; Responses to Requests for Admissions Nos. 1 and 2).
3. Johnson directed, controlled, and performed Trilogy's operations at all times relevant to the charges in the Complaint and acted on behalf of Trilogy. (Response to Request for Admission No. 3).
4. TAIR R&D Co. ("TAIR") is a Russian company and was at all times relevant to the Complaint Respondents' sole customer. (Tr. at 29; Response to Requests for Admission, Nos. 5-6).
5. Periodically, TAIR would request to purchase items from Respondents, who then procured those items for export to TAIR; some of which were manufactured and located in the United States. (Tr. at 21, 29; Answer, p. 1-2; International Invoice dated January 20, 2010; International Invoice dated March 4, 2010, International Invoice dated April 15, 2010).
6. On or about December 7, 2009, Johnson obtained an E-3500 explosives detector from Scintrex Trace Corp. ("Scintrex"), located in Ottawa, Canada. (Declaration of Agency Special Agent ("S/A") Patrick Tinning at ¶ 5; Purchase Order).⁸ On or about that same date, Johnson signed and issued to Scintrex a purchase order for the E-3500 explosives detector. Id.

⁸ The E-3500 explosive detector is the item at issue in Charge 1 of the Complaint. Respondent referred to this item as "E-3500 and accessories, a Trace detector spectrometer" in its e-mail to freight forwarder Mainfreight, Inc., regarding this export. (Email from Respondent to Kalief Brown of Mainfreight, Inc.) The item was listed as a "Trace Detector Spectrometer" in the Automated Export System ("AES") Record for this export, with a stated value of \$46,135. The stated value matched the amount Respondents invoiced TAIR for their sale of the item to TAIR. (Respondent's Response to Request for Admission No. 10). A copy of the Trilogy-TAIR invoice was attached to the email that Respondent sent Mainfreight, Inc. with Respondent's direction concerning export of the item to TAIR.

7. On or about December 30, 2009, Scintrex sent the E-3500 explosives detector to Trilogy in Tuolumne, California. (Tr. at 46; UPS Waybill; Scintrex Packing List; S/A Tinling Declaration at ¶ 5).
8. The E-3500 explosives detector is an item subject to 15 C.F.R. §734.3(a)(1) and is classified on the Commerce Control List (“CCL”) under Export Control Classification Number (“ECCN”) 1A004.d. (Agency License Determination E1025550; S/A Tinling Declaration; ¶ 8).⁹
9. Export of an E-3500 explosives detector to Russia is controlled on national security grounds and required an Agency license for export to Russia at all times relevant to the charges in the Complaint. (Agency License Determination E1025550).
10. On or about January 20, 2010, Johnson prepared an international invoice to TAIR for the E-3500 explosives detector. (Tr. at 54 – 55; International Invoice dated January 20, 2010; Response to Request for Admission No. 10; S/A Tinling Declaration at ¶ 4.a).
11. On or about January 22, 2010, Johnson delivered an E-3500 explosives detector and a related international invoice to Mainfreight, Inc. for export to TAIR in Russia. (Tr. at 46, 54 - 55; E-mail from Johnson to Kalief Brown of Mainfreight, Inc.; S/A Tinling Declaration, at ¶ 4; Response to Request for Admission No. 7).
12. On or about January 23, 2010, Johnson was the U.S. Principal Party in Interest (“USPPI”)/exporter,¹⁰ that exported the E-3500 explosives detector at issue from the United States to Russia. (Tr. at 46, 54 – 55; Automated Export System (“AES”) Record for January 23, 2010 export; Air Waybill; S/A Tinling Declaration, at ¶¶ 3, 4.a, 7).
13. No export license was obtained for the export of the E-3500 explosives detector to Russia. (Tr. at 56 – 57; S/A Tinling Declaration, at ¶ 10).
14. On or about January 21, 2010, Johnson, on behalf of Trilogy, placed an order with a United States supplier for 115 analog-to-digital converter devices,¹¹ of

⁹ The item and its related export by Respondent were subject to the regulations given that the item was located in the United States. 15 C.F.R. § 734.3(a)(1). The item became subject to the Agency once Respondent procured it and had it shipped to it in California. Id.

¹⁰ Under the regulations, “principal parties in interest” are “[t]hose persons in a transaction that receive the primary benefit, monetary or otherwise, of the transaction. Generally, the principals in a transaction are the seller and the buyer. In most cases, the forwarding or other agent is not a principal party in interest.” 15 C.F.R. §772.1.

¹¹ These 28 converters are the items at issue in Charge 2 of the Complaint. (The same type of AD9268 converters are at issue in Charge 3. Id.) Respondent exported these AD9268 converters to TAIR along with other computer/electronics goods, including an AD9910 synthesizer. (Trilogy International Invoice dated March 4, 2010).

which 28 were eventually obtained by Respondents. (Responses to Requests for Admission Nos. 20 – 22; Analog Devices Invoice; S/A Tinling Declaration, at ¶¶ 4.b, 6).

15. On or about March 4, 2010, Johnson signed and issued an international invoice for the analog-to-digital converters. (Response to Request for Admission No. 24; International Invoice; S/A Tinling Declaration, at ¶ 4.b).
16. On or about April 6, 2010, Trilogy was the United States Principal Party in Interest (“USPPI”), that exported 28 analog-to-digital converters from the United States to Russia (AES Record for April 6, 2010 export; Air Waybill; S/A Tinling Declaration at ¶¶ 3, 4.b, 7).
17. On or about May 11, 2010, Johnson, on behalf of Trilogy, placed an order with another U.S. supplier for additional analog-to-digital converters, which were then obtained by Respondents. (Response to Requests for Admissions Nos. 34 - 36; Arrow Electronics, Inc. Invoice; S/A Tinling Declaration at ¶¶ 4.b, 6).
18. On or about April 15, 2010, Johnson, on behalf of Trilogy, signed and issued an international invoice for the additional analog-to-digital converters. (Response to Request for Admission No. 38; International Invoice dated April 15, 2010; S/A Tinling Declaration at ¶ 4.c).
19. On or about May 14, 2010, Trilogy, as the United States Principal Party in Interest (“USPPI”), exported an additional 87 analog-to-digital converters from the United States to Russia. (Tr. at 69; AES Record for Trilogy International Export to TAIR on or about May 14, 2010; Air Waybill; S/A Tinling Declaration at ¶¶ 3, 4.c, 7).¹²
20. The analog-to-digital converters at issue are items subject to 15 C.F.R. §734.3(a)(1), classified on the CCL under ECCN 3A001.a.5.a.5. (Agency License Determination E1020930; S/A Tinling Declaration at ¶ 8).
21. Export of the analog-to-digital converters to Russia is controlled on national security grounds and required an Agency license for export to Russia at all times relevant to the Complaint. (Agency License Determination E1020930).
22. Neither Trilogy, nor Johnson obtained an Agency export license for the export of either the E-3500 explosives detector or the analog-to-digital converters before exporting same to TAIR in Russia. (S/A Tinling Declaration at ¶ 10).

¹² These AD9268 converters are the items at issue in Charge 3 of the Complaint. The Trilogy International invoice for these converters items lists their sale price as \$22,620.

Analysis

Having made the foregoing findings of fact largely based on Respondents' admissions, the undersigned now turns to whether BIS is entitled to summary decision as a matter of law. 15 C.F.R. § 766.8.

The Agency bears the burden of proving the allegations in the Complaint by the "preponderance of the evidence" standard of proof typically applicable in administrative or civil litigation. See *In the Matter of Ihsan Medhat Elashi*, 71 Fed. Reg. 38843, 38847 (July 10, 2006). Applying this standard of proof, the Agency is entitled to summary decision pursuant 15 C.F.R. §766.8 upon a showing "there is no genuine issue as to any material fact," and thus, it "is entitled to a summary decision as a matter of law." *Id.*

As set forth below, the record demonstrates there remain no genuine issues of material fact and the Agency is entitled to summary decision as a matter of law as to all of the charges at against Respondents. All the evidence in this case shows Respondents Trilogy and Johnson violated 15 C.F.R. § 764.2(a) and 15 C.F.R. § 764.2(b).

Trilogy Violations of 15 C.F.R. § 764.2(a)

The Charging Letters allege Respondent Trilogy violated 15 C.F.R. §764.2(a) on three instances when it sent explosives detectors and analog-to-digital converters to Russia on January 22, 2010, April 6, 2010, and May 14, 2010. Pursuant to section 764.2(a), the Agency argues Respondents were not permitted to make these three shipments without a license or authorization from BIS. Specifically, Section §764.2(a), provides:

Engaging in prohibited conduct. No person may engage in any conduct prohibited by or contrary to, or refrain from engaging in any conduct required by, the EAA, the EAR, or any order, license or authorization issued thereunder.

Similarly, Title 15 C.F.R. § 742.4 specifically requires a license for “all items in ECCN [Export Control Classification Number] on the CCL [Commerce Control List] that include NS Column 1 in the Country Chart column of the License Requirements” section.¹³ BIS contends the three Russian shipments falls under sections 764.2(a) and 742.4 because: 1) the explosive detectors and converters are listed on the Commerce Control List, classified under ECCN 1A004.d, and controlled on national security grounds for export to Russia; and 2) the analog-to-digital converters are items subject to the Regulations and at all times relevant were listed on the Commerce Control List, classified under ECCN 3A001.a.5.a.5, and controlled on national security grounds for export to Russia.

Respondent Trilogy provided no evidence showing the corporation made these shipments with a license, makes no argument the items were outside the scope of the licensure requirements in 764.2(a) and 742.4, nor provides any evidence to dispute BIS’ evidence. Instead, Respondent argues that the corporation secured a third-party, Mainfreight, Inc., to properly comply with BIS regulations and claims Trilogy “only

¹³ (a) License requirements. It is the policy of the United States to restrict the export and reexport of items that would make a significant contribution to the military potential of any other country or combination of countries that would prove detrimental to the national security of the United States. Accordingly, a license is required for exports and reexports to all destinations, except Canada, for all items in ECCNs on the CCL that include NS Column 1 in the Country Chart column of the “License Requirements” section. A license is required to all destinations except those in Country Group A:1 (see supplement no. 1 to part 740 of the EAR), for all items in ECCNs on the CCL that include NS column 2 in the Commerce Country Chart column of the “License Requirements” section except those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less. A license is required to all destinations except those in Country Group A:1 (see supplement no. 1 to part 740) for those cameras in ECCN 6A003.b.4.b that have a focal plane array with 111,000 or fewer elements and a frame rate of 60 Hz or less and for cameras being exported or reexported pursuant to an authorization described in §742.6(a)(2)(iii) or (v) of the EAR. The purpose of the controls is to ensure that these items do not make a contribution to the military potential of countries in Country Group D:1 (see supplement no. 1 to part 740 of the EAR) that would prove detrimental to the national security of the United States. License Exception GBS is available for the export and reexport of certain national security controlled items to Country Group B (see §740.4 and supplement no. 1 to part 740 of the EAR). (emphasis added).

initiated” the export transactions. In support of his position, Respondent notes the corporation gave power of attorney to Mainfreight, Inc. in 2009, authorizing “Mainfreight SFO to handle necessary export paperwork” and when doing so he assumed competence on the part of Mainfreight SFO. While recognizing Mainfreight, Inc. “failed in their responsibilities on three occasions” Respondent Trilogy insists the corporation in no way authorized Mainfreight SFO “to violate federal [law] on [Respondents’] behalf.” Respondent’s Answer, *Id.* Respondent’s argument ultimately asserts Mainfreight, Inc. is the culpable party here, not Trilogy. See Respondent’s Counter Motion. Respondent’s arguments are not persuasive.

Assuming, *for the sake of argument*, that Mainfreight, Inc., agreed to take on all licensing responsibilities, Trilogy, as the USPPI/exporter, remained obligated, as a matter of law, to determine whether a license was required under the regulations and to seek any such required license from BIS. Title 15 C.F.R. §758.3(a) clearly states:

Export transactions. The United States principal party in interest is the exporter, except in certain routed transactions. The exporter must determine licensing authority (License, License Exception, or NLR), and obtain the appropriate license or other authorization. The exporter may hire forwarding or other agents to perform various tasks, but doing so does not necessarily relieve the exporter of compliance responsibilities.

Respondent does not allege that these export transactions were routed transactions;¹⁴ therefore, per the regulations, Trilogy, as the USPPI/exporter, had the legal obligation to determine any license requirements and obtain the needed export

¹⁴ In order for these transactions to have been routed export transactions, Respondent Trilogy International, as the USPPI, would had to have obtained from TAIR, as the foreign principal party in interest, “a writing wherein the foreign principal party in interest expressly assumes responsibility for determining licensing requirements and obtaining license authority.” 15 C.F.R. §758.3(b). Respondent could not have proven that these transactions constituted routed export transactions even if it had raised such a defense.

licenses in connection with each of the exports at issue here. Trilogy's failure to do so resulted in three violations of 15 C.F.R. §764.2(a).

Ultimately, Respondent Trilogy's defense does not create a dispute of a material fact; it does not counter the evidence cited by BIS. Because Respondent Trilogy failed to produce any evidence to counter the evidence cited by BIS showing the three violations of 15 C.F.R. § 764.2(a), the undersigned will **GRANT** BIS' motions for Summary Decision on these charges. The record is undisputed, Respondent Trilogy sent three shipments on January 22, 2010, April 6, 2010, and May 14, 2010 respectively. These shipments are controlled by 764.2(a) and 742.4 because: 1) the explosive detectors and converters are listed on the Commerce Control List, classified under ECCN 1A004.d, and controlled on national security grounds for export to Russia; and 2) the analog-to-digital converters are items subject to the Regulations and at all times relevant were listed on the Commerce Control List, classified under ECCN 3A001.a.5.a.5, and controlled on national security grounds for export to Russia. Respondent Trilogy violated 15 C.F.R. § 764.2(a) by shipping these materials to Russia on three separate occasions.

Johnson Violation of 15 C.F.R. § 764.2(b)

The Agency also alleges Respondent Johnson violated the regulations when he facilitated the corporation's three unlawful shipments. Specifically, the Agency claims Respondent Johnson caused aided or abetted Respondent Trilogy, through his actions as president of the company, when he took action to initiate the unauthorized shipments in January 20, 2010, March 4, 2010, and April 15, 2010.

Pursuant to 15 C.F.R. § 764.2(b), "[n]o person may cause or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of

any act required, by the EAA, the EAR, or any order, license or authorization issued thereunder.” Here, Respondent Johnson’s actions facilitated the corporation’s violations. At a minimum, Respondent Johnson aided Respondent Trilogy by simply preparing the international invoices to TAIR for the explosives detectors on January 20, 2010. Similarly, Respondent Johnson aided and abetted Respondent Trilogy when he prepared the invoices for the converters on March 4, 2010, and April 15, 2010. However, the Agency correctly notes all of the actions taken by Respondent Trilogy were done through Respondent Johnson.

Pursuant to the Under Secretary’s May 30, 2017 Remand Order, BIS can take action against Respondents separate and apart from each other, even for the same acts. BIS correctly notes at least one federal court acknowledges an agent’s action can constitute both proof of a company’s primary violations and proof of the agent aiding and abetting violations. S.E.C. v. Koenig, 2007 WL 1074901 (N.D. ILL. Apr. 5, 2007). Accordingly, the undersigned concludes Respondent Johnson aided and abetted Respondent Trilogy when it took steps to further the illegal shipments for the company.

Respondent Johnson provides no evidence to counter the Agency’s evidence, and makes no argument that he did not take the alleged actions to further the shipments to Russia. Again, his only defense, discussed above, is that Mainfreight, Inc., bore the responsibility to comply with Agency regulations, but “failed in their responsibilities on three occasions.” This defense failed as applied to Respondent Trilogy’s three violations of 15 C.F.R. § 764.2(a) and for similar reasons, fails when applied to Respondent Johnson’s violations of 15 C.F.R. § 764.2(b).

SANCTION

Title 15 C.F.R. § 764.3 sets forth the permissible sanctions BIS may seek against regulatory violators and permits up to \$289,238 per violation, or twice the value of the transaction upon which the penalty is imposed, and a denial of Respondents' export privileges under the regulations. The maximum total civil penalty which can be imposed upon Respondent would be \$867,894 and/or a denial of export privileges for the three proved violations. The regulations do not place any limit on the length of the time period for denial of export privilege orders under 15 C.F.R. §764.3.

In its post-remand brief, the Agency argues BIS guidance on pre-litigation settlements and the outcomes of previous BIS export control cases provide useful guideposts to determine the sanction in this case. BIS also relies on the guidance in Supplement No. 1 to Part 766 of the Regulations (Penalty Guidance) to determine the appropriate sanction. Under the Penalty Guidance, the undersigned may consider factors such as: the degree of culpability (including whether reckless, knowing, or willful conduct was involved), whether there were multiple violations, and the timing of settlement. 15 C.F.R. Part 766, Supp. No. 1. The Penalty Guidance also discusses aggravating factors that may be accorded "great weight," including whether the party's conduct demonstrated a serious disregard for export compliance responsibilities, and whether the violation was significant in view of the sensitivity of the items involved and/or the reason for controlling them to the destination in questions.

The undersigned agrees Respondents' violations warrant sanctions. The undisputed facts show Respondents maneuvered to procure national security items and then to export them from the United States, without seeking authorization from BIS nor

procuring the requisite license. As the April 24, 2017 Order recognizes, Respondents were willful and reckless. Given the Under Secretary did not disturb this finding, the undersigned again finds the willfulness and recklessness relevant actions when determining a sanction in this matter. Even if the undersigned determined there was neither willful nor reckless activity, the record supports a finding that Respondents acted with gross negligence. Indeed, one of Respondents' defenses demonstrates the point.¹⁵

Specifically, as noted above, Respondents argue that Mainfreight, Inc., agreed to take on all licensing responsibilities, and it was Mainfreight that failed to comply with BIS regulations in this case. While the undersigned need not revisit why this is not a tenable defense, it is relevant to point out that even assuming there was some delegable duty under the regulations, Respondents would still be at fault for failing to identify Mainfreight's deficiencies.

For example, had Respondents produced evidence that the agent, Mainfreight, Inc., fraudulently informed Respondent Johnson that it acquired the requisite license, and produced evidence reasonably showing it complied with BIS regulations, the undersigned could potentially consider this mitigating evidence. However, Respondents produced no evidence of this and instead relies on the blanket argument that Mainfreight, Inc., bore responsibility. What is more, Respondents produced no evidence showing it monitored Mainfreight, Inc., set forth any procedures to detect and deter noncompliance, nor show why it was reasonable to rely on Mainfreight to fulfill BIS' requirements in any way. Therefore, not only does Respondents' delegation argument not excuse the conduct in this matter, it does not mitigate the severity of the actions.

¹⁵ Although Respondents did not respond to the court's instruction to file a brief addressing sanctions, the court considers his other defenses as arguments in mitigation.

Moreover, the record shows Respondents failed to learn details related to the financing of the illicit transactions, provided through Trilogy Netherlands, with the ultimate source of financing being unknown to Respondents. Johnson Depo. Tr., Exh. 3 to BIS's Brief on Sanctions, at page 91, line 5 to page 92, line 10. Such avoidance of these details shows Respondents' failure to act diligently to prevent these export transactions, or to seek proper permission from BIS. Tinling Declaration, Exh. 2 to BIS's Brief on Sanctions, at ¶ 5.

The undersigned also observes Respondent Johnson's conduct illustrates a flippant attitude toward regulatory control. As an example, Respondent Johnson straightaway acknowledged he failed to comply with California state regulations in a separate instance because "simply not complying appropriately with whatever in the hell the regulations were" because "[y]ou know, I didn't pay much attention to them." Johnson Depo. Tr. Exh. 3 to BIS' Brief on Sanctions, p. 11, 3-12.

Finally, Respondents' have yet to acknowledge the seriousness of the violations nor shown any remorse for these failures. Again, Respondents fail to even make arguments to the undersigned concerning the appropriate sanction here, show how he has corrected these issues, or might correct these issues in the future.

Ultimately, after considering the regulations, the Penalty Guidance and other BIS authority, the undersigned finds a \$50,000.00 sanction against Respondent Trilogy, and a \$50,000.00 sanction against Respondent Johnson appropriate. Furthermore, the undersigned finds both Respondent Trilogy and Johnson's export privileges should be suspended for seven years. BIS authority in similar cases supports such a sanction by analogy. See Matter of Yavuz Cizmeci (Order dated March 23, 2015); In the Matter of

Gregorio L. Salazar (Order dated Dec. 10, 2015), In the Matter of Manoj Bhayana (Final Decision and Order dated March 28, 2011).

CONCLUSION AND RECOMMENDATION

The undersigned issues this Recommended Decision and Order pursuant to 15 C.F.R. § 766.17(b)(2). The Agency's Motion for Summary Decision against Respondent Trilogy and Johnson is **GRANTED**.

The undersigned recommends the Under Secretary find each of the Section 764.2(b) charges **PROVED**. The undersigned further recommends the Under Secretary levy a fine in the amount of 50,000.00 against Respondent Trilogy; levy a fine in the Amount of 50,000.00 against Respondent Johnson; and suspended both Trilogy and Johnson's exporting privileges for seven years.

Done and dated this 24th day of January, 2018
Baltimore, MD



Bruce Tucker Smith
Administrative Law Judge
United States Coast Guard

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Recommended Decision and Order Granting Summary Decision on Remand the following:

Zachary Klein, Esq.
Attorney for Bureau of Industry and Security
Office of Chief Counsel for Industry and Security
U.S. Department of Commerce, Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230
Email: zklein@doc.gov
(Electronically and first class mail)

Trilogy International Associates, Inc.
Attn: William Michael Johnson
President and General Manager
P.O. Box 342
Altaville, CA 95221
Email: mjohnson@trilogy-inc.com
(Electronically and first class mail)

ALJ Docketing Center
Attention: Hearing Docket Clerk
40 South Gay Street, Room 412
Baltimore, MD 21202-4022
(Hand delivered)

Done and dated this 24th day of January, 2018
Baltimore, MD



Lauren M. Meus
Hearing Docket Clerk
United States Coast Guard



CHARGING LETTER

OCT 2 - 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Trilogy International Associates, Inc.
804 Sedona Court
Modesto, CA 95351

*Attention: William Michael Johnson
President and General Manager*

Dear Mr. Johnson:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Trilogy International Associates, Inc. (“Trilogy International”), of Modesto, California, has committed three violations of the Export Administration Regulations (the “Regulations”),¹ issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS alleges that Trilogy International committed the following violations:

Charges 1-3 15 C.F.R. § 764.2(a) – Engaging in Prohibited Conduct

1. On or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively, Trilogy International engaged in conduct prohibited by the Regulations by exporting items subject to the Regulations and controlled on national security grounds to Russia without the required BIS export licenses.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2015). The violations alleged occurred in 2010. The Regulations governing the violations at issue are found in the 2010 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2010). The 2015 Regulations govern the procedural aspects of this case. Trilogy International and its president and general manager, William Michael Johnson, have entered into agreements with BIS tolling the statute of limitations from and including December 29, 2014, through and including December 1, 2015, with regard to the transactions and violations at issue in this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 Fed. Reg. 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).



2. As described in further detail in the attached Schedule of Violations, which is incorporated herein by reference, the items involved were an explosives detector and a total of 115 analog-to-digital converters. The items were classified under Export Control Classification Numbers 1A004 and 3A001, respectively, controlled as indicated above on national security grounds, and valued in total at approximately \$76,035.
3. Each of the items required a license for export to Russia pursuant to Section 742.4 of the Regulations.
4. Trilogy International exported the items to TAIR R&D Co. Ltd. ("TAIR R&D Co."), a Russian company. TAIR R&D Co. employed Alexander Volkov, who had previously formed Trilogy International along with William Michael Johnson ("Johnson"). At all times pertinent hereto, Johnson was President and General Manager of Trilogy International, directed or controlled its operations, and participated in the export transactions at issue.
5. After receiving requests for the items from TAIR R&D Co., Trilogy International procured the items from suppliers in the U.S. and abroad. Once in possession of the items, Trilogy International issued invoices, signed by Johnson and dated January 20, March 4, and April 15, 2010, respectively, to TAIR R&D Co. for the sale and export of the items from the United States to Russia.
6. Trilogy then exported the items from the United States to TAIR R&D Co. in Russia on or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively.
7. As alleged above, each of the national-security-controlled items at issue required a license for export to Russia pursuant to Section 742.4 of the Regulations. However, no license was sought or obtained by Trilogy International in connection with any of the exports at issue.
8. By exporting these items without the required BIS export licenses, Trilogy International committed three violations of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Trilogy International is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation;³
- Denial of export privileges;

³ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Trilogy International fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Trilogy International defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Trilogy International. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Trilogy International is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6. Trilogy International is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Trilogy International have a proposal to settle this case, Trilogy International or its representative should transmit it to the attorney representing BIS named below.

Trilogy International is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Trilogy International may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Trilogy International's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Trilogy International's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Brian Volsky
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Trilogy International Associates, Inc.
Charging Letter
Page 4 of 3

Brian Volsky is the attorney representing BIS in this case; any communications that Trilogy International may wish to have concerning this matter should occur through him. Mr. Volsky may be contacted by telephone at (202) 482-5301.

Sincerely,



Douglas R. Hassebrock
Director
Office of Export Enforcement

Trilogy International Associates, Inc.
Charging Letter
Schedule of Violations
Page 1 of 1

Charge No.	Export Date	Description of Items	ECCN	Destination	Value	Violation
1	23-Jan-10	Explosives detector	1A004	Russia	\$46,135	15 C.F.R. § 764.2(a)
2	06-April-10	Analog-to-digital converters (28)	3A001	Russia	\$ 7,280	15 C.F.R. § 764.2(a)
3	14-May-10	Analog-to-digital converters (87)	3A001	Russia	\$22,620	15 C.F.R. § 764.2(a)



CHARGING LETTER

OCT 2 - 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William Michael Johnson
804 Sedona Court
Modesto, CA 95351

Dear Mr. Johnson:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that you, William Michael Johnson (“Johnson”), of Modesto, California, have committed three violations of the Export Administration Regulations (the “Regulations”),¹ issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS alleges that Johnson committed the following violations:

Charges 1-3 15 C.F.R. § 764.2(b) – Causing, Aiding, or Abetting a Violation

1. Between on or about January 20, 2010, and May 14, 2010, Johnson caused, aided, and/or abetted three violations of the Regulations, specifically, three exports from the United States to Russia of items subject to the Regulations without the required BIS export licenses.
2. As described in further detail in the attached Schedule of Violations, which is incorporated herein by reference, the items involved were an explosives detector and a total of 115 analog-to-digital converters, classified under Export Control Classification Numbers 1A004 and 3A001, respectively, controlled on national security grounds, and valued in total at approximately \$76,035.

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2015). The violations alleged occurred in 2010. The Regulations governing the violations at issue are found in the 2010 version of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2010). The 2015 Regulations govern the procedural aspects of this case. Johnson has entered into agreements with BIS tolling the statute of limitations from and including December 29, 2014, through and including December 1, 2015, with regard to the transactions and violations at issue in this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2015 (80 Fed. Reg. 48,233 (Aug. 11, 2015)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*) (2006 & Supp. IV 2010).



3. Each of the items at issue required a BIS license for export to Russia pursuant to Section 742.4 of the Regulations.
4. At all times pertinent hereto, Johnson was President and General Manager of Trilogly International Associates Inc. (“Trilogly International”), of Modesto, California, and directed or controlled Trilogly International’s operations.
5. Johnson also participated in and facilitated the transactions at issue, including, inter alia, procuring the items from suppliers after receiving requests from TAIR R&D Co. Ltd. (“TAIR R&D Co.”), a Russian company that employed Alexander Volkov, with whom Johnson had previously formed Trilogly International.
6. Johnson placed orders with U.S. suppliers for the analog-to-digital converters at issue and was listed as the purchaser of those items on supplier invoices dated January 21, 2010, and May 12, 2010, respectively.
7. Johnson also signed Trilogly International invoices dated January 20, March 4, and April 15, 2010, respectively, in connection with the sales and exports to TAIR R&D Co. at issue, and provided these invoices along with the items to a freight forwarder.
8. The items were then shipped on behalf of Trilogly International to TAIR R&D Co. in Russia on or about January 23, 2010, April 6, 2010, and May 14, 2010, respectively.
9. As alleged above, each of the national-security-controlled items at issue required a license for export to Russia pursuant to Section 742.4 of the Regulations. However, no license was sought or obtained by Johnson or Trilogly International in connection with any of the exports at issue.
10. By causing, aiding, and/or abetting the export of these items without the required BIS export licenses, Johnson committed three violations of Section 764.2(b) of the Regulations.

* * * * *

Accordingly, Johnson is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation;³
- Denial of export privileges;

³ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

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- Exclusion from practice before BIS; and/or
- Any other liability, sanction, or penalty available under law.

If Johnson fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7. If Johnson defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Johnson. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

Johnson is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. *See* 15 C.F.R. § 766.6. Johnson is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. *See* 15 C.F.R. §§ 766.3(a) and 766.4.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Johnson have a proposal to settle this case, Johnson or his representative should transmit it to the attorney representing BIS named below.

Johnson is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Johnson may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Johnson's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

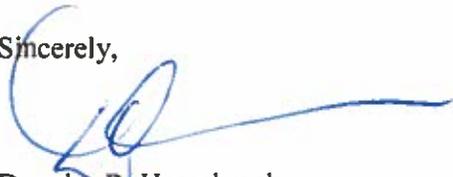
In addition, a copy of Johnson's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Brian Volsky
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

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Brian Volsky is the attorney representing BIS in this case; any communications that Johnson may wish to have concerning this matter should occur through him. Mr. Volsky may be contacted by telephone at (202) 482-5301.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Hassebrock', with a long horizontal flourish extending to the right.

Douglas R. Hassebrock
Director
Office of Export Enforcement

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Schedule of Violations
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Charge No.	Export Date	Description of Items	ECCN	Destination	Value	Violation
1	23-Jan-10	Explosives detector	1A004	Russia	\$46,135	15 C.F.R. § 764.2(b)
2	06-April-10	Analog-to-digital converters (28)	3A001	Russia	\$ 7,280	15 C.F.R. § 764.2(b)
3	14-May-10	Analog-to-digital converters (87)	3A001	Russia	\$22,620	15 C.F.R. § 764.2(b)