

R E C E I V E D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SEP 18 2018

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA,)	
)	Case No. 3:18-cv-11705
Plaintiff,)	
)	
v.)	
)	
EXERSCIENCE, INC., <i>et al.</i> ,)	
)	
Defendants.)	

CONSENT JUDGMENT AND ORDER OF PERMANENT INJUNCTION

Plaintiff United States of America and Defendants Exerscience, Inc., and James
McGregor (“Parties”) respectfully stipulate and agree to the entry of this Consent Judgment and
Order of Permanent Injunction:

1. The United States filed a Complaint to collect the federal employment, unemployment, and income tax liabilities assessed against Defendants Exerscience, Inc., and James McGregor, and to permanently enjoin the Defendants from continuing to incur additional liabilities for unpaid federal employment and unemployment taxes.
2. This Court has jurisdiction over the parties and subject-matter of this civil action.
3. The Parties stipulate to resolve this matter through a Consent Judgment and Order of Permanent Injunction.
4. The Parties waive the entry of findings of facts and conclusions of law under Rules 52 and 65 of the Federal Rules of Civil Procedure.

5. The Parties understand and agree that the Consent Judgment and Order of Permanent Injunction will constitute the final judgment in this matter. The Defendants waive the right to appeal from this judgment.
6. Parties further understand and agree that the Court will retain jurisdiction over this matter for the purpose of enforcing the Consent Judgment and Order of Permanent Injunction, and the Defendants understand that if they violate the Injunction, they may be subject to contempt proceedings.

FINAL JUDGMENT

It is ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of the United States and against Defendant Exerscience, Inc., for its delinquent federal employment tax (Form 941) liabilities for the taxable quarters from the second quarter of 2003 to the fourth quarter of 2016, in the total of \$388,681 as March 7, 2018, together with all with all interest and statutory additions that have accrued and will continue to accrue after that date according to law.

It is ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of the United States and against Defendant Exerscience, Inc., for its delinquent federal unemployment tax (Form 940) liabilities for tax year 2004 to 2011, 2015, and 2016 in the total amount of \$7,256 as of May 21, 2018, together with all interest and statutory additions that have accrued and will continue to accrue after that date according to law.

It is ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of the United States and against Defendant Exerscience, Inc., for its delinquent federal income tax (Form 1120) liabilities for tax year 2003 to 2008 in the amount of \$481,470 as of May 21, 2018, together with all interest and statutory additions that have accrued and will continue accruing thereafter according to law.

It is ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of the United States and against James McGregor for the trust fund recovery penalties assessed against him for the periods from June 30, 2013, to March 31, 2016, with respect to the unpaid federal employment taxes of Exerscience, Inc., in the amount of \$29,259 as of May 21, 2018, together with all interest and costs that have accrued and will continue accruing thereafter according to law.

**PERMANENT INJUNCTION AGAINST DEFENDANTS
EXERSCIENCE, INC., AND JAMES MCGREGOR**

IT IS ORDERED, ADJUDGED, and DECREED that Defendants Exerscience, Inc., and James McGregor, are PERMANENTLY ENJOINED under 26 U.S.C. § 7402(a) and Fed. R. Civ. P. 65, from acting either directly or indirectly through any successors agents, employees, accountants, attorneys, or others acting in active concert with them as follows:

1. The entry of this Permanent Injunction against Defendants Exerscience, Inc., and James McGregor is necessary and appropriate for the enforcement of the internal revenue laws;
2. Exerscience, McGregor, and any other employer entity that Exerscience or McGregor control:
 - a. shall withhold from each employee's paycheck an appropriate amount of income tax and the employee portion of the FICA tax;
 - b. shall timely deposit withheld employee income tax, withheld employee FICA tax, and employer FICA tax in an appropriate federal depository bank in accordance with federal deposit regulations;
 - c. shall timely deposit FUTA taxes in an appropriate federal depository bank each quarter in accordance with federal deposit regulations;

- d. shall sign and deliver to a designated IRS revenue officer, or to such specific location as the IRS may deem appropriate, on the first day of each month, an affidavit stating that the required federal income taxes, FICA taxes, and FUTA taxes were fully and timely deposited for each pay period during the prior month while McGregor is operating Exerscience or any other employer entity;
 - e. shall timely file Form 941 employment tax returns and Form 940 unemployment tax returns that come due after the date of the injunction, and McGregor shall provide a copy of each filed return to a designated IRS revenue officer in such manner as the IRS deems appropriate, within five days of filing; and
 - f. shall timely pay all required outstanding liabilities due on each return required to be filed under the Court's injunction order;
3. If Exerscience or any other employer entity under Exerscience's or McGregor's control is operating, then Exerscience, McGregor, and the other employer entity shall **not**:
- a. pay other creditors or transfer, disburse, or assign any money, property, or assets of Exerscience of the other employer entity after the date of the injunction order until after such time as the required deposits described in paragraph 1, have been paid in full, for any tax period ending after the injunction is issued; and
 - b. assign or transfer money or property to any other entity to have that entity pay the salaries or wages of its employees, except for a commercial payroll services provider approved in advance by counsel for the United States;
4. Exerscience and McGregor shall permit a representative from the Internal Revenue Service to inspect Exerscience's books and records periodically with two days' notice of each inspection;

5. McGregor shall notify, in writing, such revenue officer as the IRS designates, if he intends to or does form, incorporate, own, or work in a managerial capacity for another business entity. Regardless of such notification, the preceding subparagraphs of this paragraph 1 and 2 shall apply to any employer entity controlled by McGregor;
6. If Exerscience or any other employer entity under Exerscience's or McGregor's control is operating, then Exerscience, McGregor, and the other employer entity shall deliver to all of their current or future employees or to any other persons acting in active concert or participating with them, a copy of the Court's findings and injunction;
7. The United States may take post-judgment discovery in this matter, including to ensure compliance with this Permanent Injunction;
8. Notice of this Permanent Injunction shall be served by the United States via certified mail upon Exerscience and McGregor within three days of its entry upon the docket; and

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9. This Court hereby Court retain jurisdiction over this case to ensure compliance with this
Permanent Injunction.

Signed this _____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE



ARI D. KUNOFSKY
Trial Attorney, Tax Division
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JAMES MCGREGOR
6 Omega Court
Middletown, NJ 07748
*Both in his personal capacity and as a corporate president,
sole officer, and sole owner of Exerscience, Inc.*

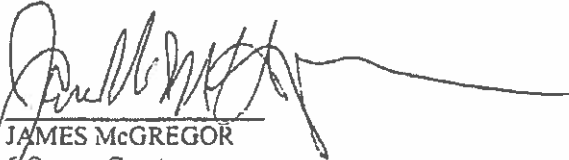
9. This Court hereby Court retain jurisdiction over this case to ensure compliance with this
Permanent Injunction.

Signed this 18 day of SEPTEMBER, 2018.



UNITED STATES DISTRICT JUDGE

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