

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Small Business Administration (collectively the “United States”), Sextant Marine Consulting LLC (“Sextant”) and Bryan Quesenberry (“Quesenberry” or “Relator”) (the United States, Sextant, and Relator are hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Sextant is a limited liability corporation organized under the laws of Florida and located at 1917 NW 82nd Avenue, Miami, Florida, 33126. Sextant is a certified duct cleaning company that provides a variety of duct cleaning services, including commercial kitchen and galleys exhaust systems, HVAC systems, laundry extraction systems, and ship engine and exhaust pipes.

B. On or about April 16, 2020, Sextant applied through Wells Fargo Bank, N.A., for an SBA-guaranteed Paycheck Protection Program Loan in the amount of \$169,811.00. On May 22, 2020, Sextant’s PPP Application was approved and Sextant received a Wells Fargo Paycheck Protection Loan through Wells Fargo SBA Lending in the amount of \$169,811.00 (“Wells Fargo SBA PPP Loan”). On April 23, 2020, Sextant applied through biz2credit.com for an SBA-guaranteed Paycheck Protection Program Loan in the amount of \$150,000.00. On May 8, 2020, Sextant’s PPP Application was approved and Sextant received a Cross River Paycheck Protection Program Loan through Cross River Bank in the amount of \$150,000.00 (“Cross River SBA PPP Loan”). SBA paid a total of \$8,490.55 in processing fees to Wells Fargo SBA Lending in connection with the second Paycheck Protection Program loan disbursed to Sextant.

C. On September 18, 2020, Bryan Quesenberry filed a *qui tam* action in the United States District Court for the Southern District of Florida captioned [REDACTED] [REDACTED] pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that Sextant unlawfully applied for and received two PPP loans prior to December 31, 2020, and falsely certified that it would receive only one PPP loan prior to December 31, 2020.

D. On May 12, 2021, after receipt of a civil investigative demand from the Department of Justice, Sextant repaid the Wells Fargo SBA PPP Loan in full to the lender.

E. The United States contends that it has certain civil claims against Sextant arising from Sextant’s false certifications in connection with the Wells SBA PPP Loan and Cross River SBA PPP Loan, specifically Sextant’s certification that it would not receive more than one PPP loan prior to December 31, 2020. That conduct is referred to below as the “Covered Conduct.”

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Sextant shall pay to the United States \$30,000.00 (“Settlement Amount”), of which \$8,490.55 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Southern District of Florida on the following schedule:

- a. By October 15, 2021, Sextant shall pay the sum of Eight Thousand Dollars (\$8,000.00) to the United States; and,
- b. Sextant shall pay to the United States the additional sum of Twenty Thousand Dollars (\$22,000.00), in monthly installments in accordance with the schedule set forth in Attachment A to this Agreement.
- c. Nothing shall preclude Sextant from making at any time such full payment or additional advance payments toward satisfaction of its obligations under this Paragraph 1.
- d. In the event that Sextant fails to pay any installment of the Settlement Amount as provided in this Paragraph, Subparagraphs 1.a. and 1.b. and the Schedule set forth in Addendum A hereto by the date upon which it is due, Sextant shall be in Default of its payment obligation (“Default”). The United States will provide by electronic mail, a written Notice of Default, and Sextant shall have an opportunity to cure such Default within three (3) business days from the date the Notice of Default is sent by counsel for the United States. Notice of Default will be delivered to Sextant, through its legal counsel, by electronic mail at the address below or to such other representative of Sextant as Sextant shall designate in advance in writing. If Sextant fails to cure the Default within three (3) business days from the date the Notice of Default is sent by counsel for the United States, the difference between the amount of the Settlement Proceeds the United States received from Sextant prior to default and \$40,000.00 shall become immediately due and payable and interest on such amount shall accrue at the rate of 10% per annum, compounded daily from the date of Default. Sextant shall upon execution of this Settlement Agreement enter into a

Consent Judgment in the form attached as Attachment B and the United States, at its sole discretion, may (a) offset the remaining unpaid balance from any amounts due and owing to Sextant by any department, agency, or agent of the United States at the time of the Default, including but not limited to the United States Small Business Administration; or (b) exercise any other rights granted by law or in equity, including the option of referring such matters for private collection. The United States shall not file the Consent Judgment if Sextant is not in Default as Default is defined above or, if Sextant cures the Default as provided above. Sextant agrees not to contest any offset imposed and not to contest any Consent Judgment 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. At its sole option, in the event of Default as defined above, the United States alternatively may rescind this Agreement as to Sextant and bring any civil and/or administrative claim, action, or proceeding against Sextant for the claims that would otherwise be covered by the releases provided herein. If the United States opts to rescind this Agreement in the event of Default as defined above, Sextant 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 are (a) filed by the United States against Sextant within 180 days of written notification to Sextant that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the particular date when the Civil Action referenced in Recital Paragraph A was filed.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay to Relator, by electronic funds transfer, fifteen percent (15%) of each payment made by Sextant (“Relator’s Share”).

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases Sextant from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Subject to the exceptions in Paragraph 5 below, and upon the United States’ receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Sextant from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

5. Notwithstanding the releases given in Paragraph 3 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and

f. Any liability of individuals.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Sextant, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

8. Sextant waives and shall not assert any defenses Sextant may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

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

10. Sextant fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Sextant has asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

11. Unallowable Costs

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 Sextant, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Sextant's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Sextant makes to the United States pursuant to this Agreement and any payments that Sextant may make to Relator, including costs and attorney's fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Sextant, and Sextant shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Sextant shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Sextant or any of its subsidiaries or affiliates from the United States. Sextant agrees that the United States, at a minimum, shall be entitled to recoup from Sextant 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 Sextant's books and records and to disagree with any calculations submitted by Sextant or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Sextant, or the effect of any such Unallowable Costs on the amount of such payments.

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

14. Upon receipt of the payment described in Paragraph 1.a., above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of all claims against Sextant in the Civil Action pursuant to Rule 41(a)(1).

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Florida. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

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

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

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

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

[Signature Pages Follow]

THE UNITED STATES OF AMERICA

Dated: the 29th day of September, 2021

By: **JARED WIESNER** Digitally signed by JARED WIESNER
Date: 2021.09.29 16:03:03 -04'00'

Jared Wiesner
Trial Attorney
United States Department of Justice
Civil Division
Commercial Litigation Branch
P.O. Box 261, Ben Franklin Station
Washington, DC 20044

eMail: Jared.S.Wiesner2@usdoj.gov
Telephone: 202.353.1274

Counsel for the United States of America

Dated: the 29th day of September, 2021

By: **James A. Weinkle** Digitally signed by James A. Weinkle
Date: 2021.09.29 16:24:46 -04'00'

James A. Weinkle
Assistant United States Attorney
Florida Bar No.: 710891
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for the Southern District of Florida
99 N.E. 4th Street, 3rd Floor
Miami, Florida 33132

eMail: James.Weinkle@usdoj.gov
Telephone: 305.961.9290

Counsel for the United States of America

SEXTANT MARINE CONSULTING LLC

Dated: the 29 day of September, 2021 By: Matteo Gazzolo

Matteo Gazzolo

Printed Name

Manager

Title

Dated: the 29th day of September, 2021 By: Jason Klein

Jason Klein, Esq.

Florida Bar No.: 129097

BALES SOMMERS & KLEIN, P.A.

2 South Biscayne Blvd.

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Miami, FL 33131

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As Counsel for Sextant Marine Consulting, LLC

RELATOR – BRYAN QUESENBERRY

Dated: the ____ day of September, 2021 By: _____

Bryan Quesenberry

197 East 100 North, Suite A

Payson, UT 84651

Email: jbq.esq@gmail.com

Pro Se Relator

SEXTANT MARINE CONSULTING LLC

Dated: the ____ day of September, 2021 By: _____

Printed Name

Title

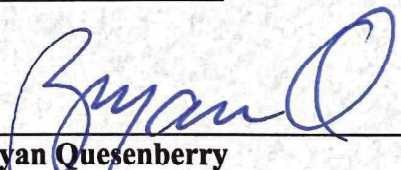
Dated: the ____ day of September, 2021 By: _____

Jason Klein, Esq.
Florida Bar No.: 129097
BALES SOMMERS & KLEIN, P.A.
2 South Biscayne Blvd.
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Miami, FL 33131

eMail: jklein@bsklawyers.com
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As Counsel for Sextant Marine Consulting, LLC

RELATOR – BRYAN QUESENBERRY

Dated: the 29 day of September, 2021 By: 

Bryan Quesenberry
197 East 100 North, Suite A
Payson, UT 84651
Email: jbq.esq@gmail.com

Pro Se Relator

Attachment A

Attachment A – Payment Schedule

| Due Date | Amount |
|---------------------------------------|---------------------|
| By Friday, October 15, 2021 | \$ 8,000.00 |
| Monday November 1, 2021 | \$ 2,000.00 |
| Wednesday, December 1, 2021 | \$ 2,000.00 |
| Monday, January 3, 2021 | \$ 2,000.00 |
| Tuesday, February 1, 2022 | \$ 2,000.00 |
| Tuesday, March 1, 2022 | \$ 2,000.00 |
| Friday, April 1, 2022 | \$ 2,000.00 |
| Monday, May 2, 2022 | \$ 2,000.00 |
| Wednesday, June 1, 2022 | \$ 2,000.00 |
| Friday, July 1, 2022 | \$ 2,000.00 |
| Monday, August 1, 2022 | \$ 2,000.00 |
| Thursday, September 1, 2022 | \$ 2,000.00 |
| Total Due to the United States | \$ 30,000.00 |

Attachment B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

[REDACTED]

[REDACTED]

FILED *EX PARTE*
AND UNDER SEAL
PURSUANT TO
31 U.S.C. § 3730 (b)(2)

CONSENT JUDGMENT

Plaintiff United States of America (the “United States”) and Defendant Sextant Marine Consulting, LLC, a Florida Limited Liability Company (“Sextant”) (the United States and Sextant are collectively referred to here as the “Parties”), hereby stipulate, agree and consent to the entry of this judgment based upon the following uncontested allegations:

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331, 1345, 1367(a). Sextant consents to the jurisdiction of the United States District Court for the Southern District of Florida for the resolution of this dispute.
2. On the 29th day of September, 2021, Defendant, Sextant, entered into a Settlement Agreement with Plaintiff United States of America for the purpose of resolving a dispute (the “Settlement Agreement”). A copy of the Settlement Agreement is attached hereto as Exhibit 1 and incorporated by reference herein.
3. Under the terms of the Settlement Agreement, Sextant agreed to pay to the United States the sum of \$30,000.00 (Settlement Amount).
4. Also under the terms of the Settlement Agreement, Sextant agreed that in the event Sextant defaulted and failed to pay the Settlement Amount, within three (3) business days of the date the Notice of Default is sent by counsel for the United States, the United States may file a Consent Judgment against Sextant in the amount of the difference between the remaining unpaid balance of the Settlement Amount and \$40,000.00 and interest on such amount shall accrue at the rate of 10% per annum, compounded daily from the date of Default.
5. Sextant has failed to make payment in accordance with the Settlement Agreement, and therefore is in default under the terms of the Settlement Agreement.

6. Unless it has already done so, within a reasonable time after the filing of this Consent Judgment, the United States will file a statement of debt showing the amount due and owing under the Settlement Agreement as of the date of default.

7. The United States has given Sextant written notice of default under the terms of the Settlement Agreement and demanded that Sextant cure that default by tendering payment in full on the cure amount under the terms of the Settlement Agreement. The United States has given Sextant three (3) business days to cure the default, as provided in the Settlement Agreement, but Sextant has failed to respond or to make arrangements to comply with the terms of the Settlement Agreement.

ACCORDINGLY, THIS COURT enters judgment for the United States against Defendant Sextant Marine Consulting, LLC in the amount of \$_____, plus interest at the post-judgment interest at the rate of 10% per annum, compounded daily from the date this Consent Judgment is entered until it is satisfied. This Court retains jurisdiction over this action.

DONE AND ORDERED in the Southern District of Florida this ___ day of _____, 202_.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Conformed copies to:
Counsel of Record for the United States and Sextant

Consent to file

Pursuant to the CM/ECF Administrative Procedures Rule 3J.(3), Jason Klein, Esq., Counsel for Sextant, has consented to the undersigned Assistant United States Attorney's electronic filing of this Joint Stipulation and proposed Order.

The parties hereby stipulate and agree to the entry of this Consent Judgment.

A proposed order accompanies this motion.

Dated: September 29, 2021

Respectfully submitted,

BALES SOMMERS & KLEIN, P.A.

JUAN ANTONIO GONZALEZ
Acting United States Attorney

By: _____


Jason Klein, Esq.
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Tel.: 305-372-1200
Email: jklein@bsklawyers.com

By: **James A. Weinkle**

Digitally signed by James A. Weinkle
Date: 2021.09.29 16:33:53 -0400

JAMES A. WEINKLE
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Counsel for Defendant
Sextant Marine Consulting, LLC

Counsel for the United States of America

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Acting Assistant Attorney General

Jamie Ann Yavelberg
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Counsel for the United States of America

BRYAN QUESENBERRY, ESQ.

By: _____

Bryan Quesenberry
Digitally signed by Bryan Quesenberry
Date: 2021.09.29 16:13:45 -06'00'

Bryan Quesenberry
197 East 100 North, Suite A
Payson, UT 84651
Email: jbq.esq@gmail.com

Pro Se Relator

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that on the __ day of _____, 2021, I electronically caused the foregoing document to be filed with the Clerk of Court using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record in the manner specified via transmission of Notices of Electronic Filing generated by CM/ECF and/or via eMail.

By: _____
James A. Weinkle
Assistant United States Attorney

SERVICE LIST

[REDACTED]
[REDACTED]
United States District Court, Southern District of Florida

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>James A. Weinkle Assistant United States Attorney Office of the United States Attorney Southern District of Florida 99 N.E. 4th Street, Third Floor Miami, FL 33132</p> <p>Email: James.Weinkle@usdoj.gov</p> <p><i>Counsel for the United States of America</i></p> | <p>Jared S. Wiesner Trial Attorney U.S. Department of Justice Civil Division P.O. Box 261, Ben Franklin Station Washington, DC 20044</p> <p>Email: jared.s.wiesner2.@usdoj.gov</p> <p><i>Counsel for the United States of America</i></p> |
| <p>Bryan Quesenberry, Esq. 197 East 100 North, Suite A Payson, UT 84651</p> <p>Email: jbq.esq@gmail.com</p> <p>Relator and Counsel for Relator</p> | <p>Jason Klein, Esq. BALES SOMMERS & KLEIN, P.A. 2 South Biscayne Blvd. Suite 1881 Miami, FL 33131 Tel.: 305-372-1200</p> <p>Email: jklein@bsklawyers.com</p> <p>Counsel for Defendant Sextant Marine Consulting, LLC</p> |