

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”), Daniel Markus, Inc. (“DMI”), Margarita Risis (“Risis”), and Bryan Quesenberry (“Quesenberry” or “Relator”) (collectively referred to as “the Parties”) through their authorized representatives.

RECITALS

A. DMI is a corporation organized under the laws of New Jersey and located at 869 Kearny Avenue, Kearny, NJ 07032. DMI operated multiple pawn shops in New Jersey. Risis is DMI’s sole shareholder.

B. On September 12, 2020, Bryan Quesenberry, proceeding *pro se*, filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Quesenberry v. Artistic Tile, Inc.*, Case No. 20-cv-13070, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that DMI unlawfully applied for and received two loans under the Paycheck Protection Program (“PPP”) prior to December 31, 2020 and falsely certified, in the submitted applications for the PPP loans, that it would receive only one PPP loan prior to December 31, 2020.

C. The PPP was established pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The CARES Act, which was enacted in March 2020, was designed to provide emergency financial assistance to millions of Americans suffering economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for employee payroll and certain other expenses, through the PPP. To obtain a PPP loan, a qualifying business was required submit a

PPP loan application, which is signed by an authorized representative of the business. The loan application requires the business—through its authorized representative—to acknowledge the program rules and make certain affirmative certifications regarding its eligibility to obtain the PPP loan. A PPP loan application must be processed by a participating lender, which receives a processing fee from SBA. If a loan application is approved, the participating lender funds the loan, which is 100% guaranteed by the SBA.

D. The United States contends that it has certain civil claims against DMI and Risis for engaging in the following conduct, hereinafter referred to as the “Covered Conduct”:

The United States contends that, in April 2020, DMI, by and through Risis, submitted an application for a PPP loan to “Lender 1,” a bank headquartered in Salt Lake City, Utah. In that application, DMI, by and through Risis, falsely stated that “[d]uring the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the [PPP]” (hereinafter, the “False Statement”). Subsequently, DMI, by and through Risis, entered into a promissory note by which Lender 1 agreed to lend \$242,849 to DMI pursuant to the PPP (the “Lender 1 PPP Loan”), and DMI received the Lender 1 PPP Loan proceeds by electronic transfer.

The United States further contends that, in April 2020, DMI, by and through Risis, submitted an application for a PPP loan to “Lender 2,” a bank headquartered in McLean, Virginia. In that application, DMI, by and through Risis, falsely stated that “[d]uring the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the [PPP].” Subsequently, DMI, by and through Risis, entered into a promissory note by which Lender 2 agreed to lend \$268,300 to DMI pursuant to the PPP (the “Lender 2 PPP Loan”), and DMI received the Lender 2 PPP Loan funds by electronic transfer.

The United States contends that, after receiving both the Lender 1 PPP Loan funds and the Lender 2 PPP Loan funds, DMI knowingly and improperly retained the funds obtained from both loans, contrary to the express certifications that DMI made, by and through Risis, that DMI would not receive more than one PPP loan prior to December 31, 2020.

E. The United States contends that it has certain civil claims against DMI and Risis for violation the False Claims Act, 31 U.S.C. § 3729-3733 (“FCA”), and under the Financial

Institutions Reform, Recovery and Enforcement Act of 1989, 12 U.S.C. § 1833a (“FIRREA”), predicated on violations of 18 U.S.C. § 1014, 15 U.S.C. § 645(a), 18 U.S.C. § 1001, 18 U.S.C. § 1343, and 18 U.S.C. § 1344.

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

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. DMI and Risis, jointly and severally, shall pay to the United States \$50,000 (“Settlement Amount”) by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the District of New Jersey no later than 14 days after the date of this Agreement.

2. DMI agrees to refrain from requesting loan forgiveness from SBA for the Lender 1 PPP Loan and shall extinguish the SBA guarantee on the loan by repaying the Lender 1 Bank PPP Loan in keeping with the terms of its promissory note, except that DMI shall fully repay the loan no later than 12 months after the date of this Agreement.

3. In the event that DMI or Risis fail to complete the payments set forth in Paragraphs 1 or 2 by the dates upon which they are due, DMI and Risis shall be in Default of their payment obligations (“Default”). Upon Default, the United States will provide DMI and Risis, through their legal counsel or other representative previously designated by DMI and Risis, by electronic mail a written Notice of Default, and DMI and Risis shall have an opportunity to cure such Default within three business days from the date the Notice of Default is

sent by counsel for the United States. If DMI and Risis fail to cure the Default within three business days from the date the Notice of Default is sent by the United States, the difference between the amount paid by DMI and Risis under Paragraph 1 and \$50,000 shall become immediately due and payable, and interest on such amount shall accrue at the rate of 10 percent per annum, compounded daily from the date of Default. In addition, the amount of any SBA guarantee paid in connection with the Lender 1 PPP Loan shall be trebled and become immediately due and payable to the United States, and interest on such amount shall accrue at the rate of 10 percent per annum, compounded daily from the date the guarantee is paid by SBA.

4. Upon execution of this Settlement Agreement, DMI and Risis shall enter into a Consent Judgment with the United States in the form attached as Attachment A. The United States shall not file the Consent Judgment unless DMI and Risis are in uncured Default as defined above. DMI and Risis agree 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 uncured Default as defined above, the United States alternatively may rescind this Agreement as to DMI or Risis and bring any civil and/or administrative claim, action, or proceeding against DMI or Risis 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 uncured Default as defined above, DMI or Risis 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 DMI or Risis within 180 days of written notification to DMI and Risis 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 D was filed.

5. Conditioned upon the United States receiving the payment set forth in Paragraph 1, the United States shall pay to Relator \$3,541.05 by electronic funds transfer (“Relator’s Share”). No other relator share payments shall be made under this Agreement.

6. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases DMI and Risis 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; FIRREA, 12 U.S.C. § 1833a; or the common law theories of payment by mistake, unjust enrichment, and fraud.

7. Subject to the exceptions in Paragraph 8 below, and upon the United States’ receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases DMI and Risis 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.

8. Notwithstanding the releases given in Paragraph 6 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, except Margarita Risis.

9. 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.

10. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Risis and DMI, and its DMI's 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.

11. DMI and Risis waive and shall not assert any defenses DMI or Risis 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.

12. DMI and Risis fully and finally release 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 DMI or Risis have 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.

13. DMI and Risis fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that DMI or Risis have 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.

14. 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 DMI or Risis, and DMI's 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) DMI'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 DMI makes to the United States pursuant to this Agreement and any payments that DMI 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 DMI and Risis, and DMI and Risis 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, DMI and Risis shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by DMI and Risis or any of its subsidiaries or affiliates from the United States. DMI and Risis agree that the United States, at a minimum, shall be entitled to recoup from DMI and Risis 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 DMI's and Risis's books and records and to disagree with any calculations submitted by DMI and Risis or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by DMI and Risis, or the effect of any such Unallowable Costs on the amount of such payments.

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

16. Upon receipt of the payment described in Paragraph 1, above, Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of all claims against DMI in the Civil Action pursuant to Rule 41(a)(1)(A). Such dismissal shall be: (a) with prejudice to the Relator as to all claims against all named defendants in the Civil Action; (b) with prejudice to the United States as to the Covered Conduct; and (c) without prejudice to the United States as to all other claims or allegations in the Civil Action.

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

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

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. 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.

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

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

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

23. This Agreement is binding on DMI's and Risis' successors, transferees, heirs, and assigns.

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

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

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

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THE UNITED STATES OF AMERICA

Dated: the 16 day of March, 2022

By: Jared S. Wiesner
Jared Wiesner
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: the 17 day of March, 2022

By: [Signature]
David V. Simunovich
Assistant United States Attorney
Counsel for the United States
970 Broad Street, Suite 700
Newark, NJ 07102
Tel: (973) 645-2736
Attorneys for United States of America

APPROVED:

[Signature]

R. DAVID WALK, JR.
Chief, Government Fraud Unit
United States Attorney's Office
District of New Jersey

DANIEL MARKUS, INC. & MARGARITA RISIS

Dated: the 15 day of March, 2022



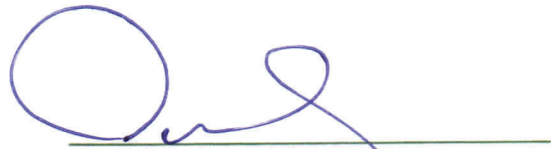
Daniel Markus, Inc.
By: Margarita Risis
President

Dated: the 15 day of March, 2022



Margarita Risis

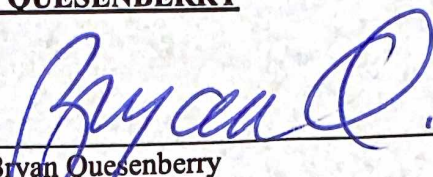
Dated: the 15 day of March, 2022



David S. Hong, Esq.
Law Office of David S. Hong
c/o Prestige
350 W. 42nd Street, Suite 19H
New York, NY 10036
*Counsel for Daniel Markus, Inc. and
Margarita Risis*

RELATOR – BRYAN QUESENBERRY

Dated: the 16 day of March, 2022

By: 
Bryan Quesenberry
Pro Se Relator

Attachment A

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

UNITED STATES OF AMERICA)
ex rel. BRYAN QUESENBERRY)
)
Plaintiff/Relator,)
) No.: 20-cv-13070 (RMB/KMW)
v.)
)
DANIEL MARKUS, INC., and)
MARGARITA RISIS,)
)
Defendants.)

CONSENT JUDGMENT

Plaintiff United States of America (the “United States”) and Defendants Daniel Markus, Inc. (“DMI”) and Margarita Risis (“Risis”) (collectively referred 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). DMI and Risis consent to the jurisdiction of the United States District Court for the District of New Jersey for the resolution of this dispute.

2. On the ___ day of January, 2022, Defendants DMI and Risis entered into a Settlement Agreement with Plaintiff United States 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, DMI and Risis agreed to pay to the United States the sum of \$50,000 (Settlement Amount) and the outstanding

balance of its Paycheck Protection Program loan through “Lender 1,” a bank headquartered in Salt Lake City, Utah (the “PPP Loan”).

4. Also under the terms of the Settlement Agreement, DMI and Risis agreed that in the event DMI or Risis 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 DMI and Risis in the amount of (1) the unpaid balance of the Settlement Amount, and (2) three times the amount of any SBA guarantee paid in connection with the PPP Loan.

5. DMI and Risis have now 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 DMI and Risis written notice of default under the terms of the Settlement Agreement, and demanded that DMI and Risis cure that default by tendering payment in full on the cure amount under the terms of the Settlement Agreement. The United States has given DMI and Risis three (3) business days to cure the default, as provided in the Settlement Agreement, but DMI and Risis 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 Defendants DMI and Risis 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 District of New Jersey this ___ day of _____, 202__.

UNITED STATES DISTRICT JUDGE

Conformed copies to:

Counsel of Record for the United States and DMI and Risis

Consent to File

Pursuant to the CM/ECF Administrative Procedures Rule David Hong, Esq., Counsel for DMI and Risis, 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.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that on _____, 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: /s/ _____
David V. Simunovich
Assistant United States Attorney

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