

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 General Services Administration (collectively the United States) and Michael John Lowe (Lowe) (hereafter collectively referred to as the Parties), through their authorized representatives.

RECITALS

A. In approximately April of 2014, Lowe purchased a partial ownership interest in Time Enterprises, LLC (Time). Under Time's operating agreement, Lowe received twenty-five percent (25%) of Time's net operating profit.

B. Time sold office supply products on two federal internet purchasing platforms:

i. The General Services Administration (GSA) Advantage! online ordering website that allows federal government agencies to search, compare, and order goods and services; and,

ii. The Department of Defense eMall (now known as FedMall), an ecommerce platform that matches buyers and sellers of products.

C. The United States contends that it has certain civil claims against Lowe, arising from the following conduct: Between April 15, 2014, and July 12, 2017, Lowe, through his company Time, knowingly submitted claims for payment to federal-agency customers that falsely charged for name brand OEM printer cartridges, when Time instead provided lower-cost compatible cartridges to these federal customers. The conduct described in this paragraph (C) is referred to herein as the Covered Conduct.

D. This Agreement is neither an admission of facts or liability by Lowe nor a concession by the United States that its claims are not well founded.

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 Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Lowe shall pay to the United States one hundred twenty thousand dollars (\$120,000) (Settlement Amount) plus interest on the Settlement Amount at a rate of 3% per annum from March 1, 2021 through the date paid by electronic funds transfer, pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California, on or before the later of thirty (30) business days after the Effective Date of this Agreement or five (5) business days after receiving the above-referenced written instructions. If payment is not timely received as required above, Lowe shall also pay interest on the amounts not received at a rate of 10% in addition to the 3% noted above (13%) from the date payment was due through the date payment is received. The Settlement Amount includes one hundred twenty thousand dollars (\$120,000) restitution.

2. The Settlement Amount is in addition to the following restitution previously paid by Lowe:

- a. Lowe's individual interest in the amount of \$128,629 seized by the United States by lawful process on or about July 12, 2017, from American River Bank, account number xxxxx2213, where it was held in the name of Time Enterprises, LLC.;
- b. \$293,568 seized by the United States by lawful process on or about July 12, 2017, from Wells Fargo Bank, account number xxxxx69990, where it was held in the name of Michael and Erin Lowe; and

- c. \$24,502 seized by the United States by lawful process on or about July 12, 2017, from Wells Fargo Bank, account number xxxxx60696, where it was held in the name of Michael and Erin Lowe.

3. Subject to the exceptions in Paragraph 4 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus interest due under paragraph 1, the United States releases Lowe from any civil claims 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; 41 U.S.C §§ 7101-7109; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. 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;

- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and,
- g. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

5. Lowe waives and shall not assert any defenses Lowe 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.

6. Lowe 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 Lowe 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 and the United States' investigation and prosecution thereof. Lowe hereby expressly waives all rights it may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Lowe's releases herein shall be effective whether or not they release claims that are currently known, unknown, foreseen or unforeseen.

7. 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 Lowe, 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) Lowe's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and 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 Lowe makes to the United States pursuant to this Agreement,

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 Lowe, and Lowe 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, Lowe shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Lowe or any of its subsidiaries or

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

8. Lowe agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Lowe shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Lowe further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

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

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

11. Each of the Parties and each signatory to this Agreement warrants and represents that it freely and voluntarily enters into this Agreement without any degree of

duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Agreement, or its representatives, or any other person, except as expressly set forth herein.

12. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of California. 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.

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

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

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

16. This Agreement is binding on Lowe's successors, transferees, heirs, and assigns.

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

18. 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.

THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
Acting United States Attorney

Dated: _____

By: _____
Catherine J. Swann
Assistant U.S. Attorney


MICHAEL J. LOWE

Dated: 4/16/2021

By: 
Michael J. Lowe

Womble Bond Dickinson (US) LLP

Dated: 4/14/2021

By: 
Matt Koehl
Attorneys for Michael J. Lowe

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THE UNITED STATES OF AMERICA

PHILLIP A. TALBERT
Acting United States Attorney

Dated: _____

By: _____
Catherine J. Swann
Assistant U.S. Attorney

MICHAEL J. LOWE

Dated: 4/13/21

By: 
Michael J. Lowe

Womble Bond Dickinson (US) LLP

Dated: _____

By: _____
Matt Koehl
Attorneys for Michael J. Lowe