

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, MWW Group LLC d/b/a MIKEWORLDWIDE (“MWW”) and Aidan Forsyth (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. MWW is a limited liability company with a principal place of business at 1 Meadowlands Plaza, East Rutherford, NJ 07073.

B. On January 19, 2023, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. Forsyth v. MWW Group LLC*, Civil Action No. 23-299 (EP) (JRA), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action).

C. The United States contends that it has certain civil claims against MWW. Specifically, the United States contends that, on or about February 4, 2021, MWW applied for a loan pursuant to the Paycheck Protection Program (“PPP”) under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), even though MWW was ineligible for such a loan because it was a registrant under the Foreign Agent Registration Act (“FARA”). Based on MWW’s application and certification of eligibility, SBA approved the PPP loan on or about February 7, 2021. That conduct is referred to below as the Covered Conduct.

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

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

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. MWW shall pay to the United States two million two hundred ninety thousand dollars (\$2,290,000), of which the United States considers two million and sixty thousand dollars (\$2,060,000) to be restitution (the "Settlement Amount"). MWW disputes that any portion of its payment should be considered "restitution" and views its payment to be "compensatory damages" under the False Claims Act. Interest on the Settlement Amount will accrue at a rate of 2% per annum from November 1, 2023, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey. MWW shall pay the Settlement Amount in installment payments pursuant to the following schedule:

- A. Within 30 days of the last signature on this Agreement (the "Effective Date of the Agreement"), MWW shall make its first installment payment of \$458,000, plus interest;
- B. Within 90 days of the Effective Date of the Agreement, MWW shall pay \$458,000, plus interest;
- C. Within 180 days of the Effective Date of the Agreement, MWW shall pay \$458,000, plus interest;

- D. Within 270 days of the Effective Date of the Agreement, MWW shall pay \$458,000, plus interest; and
 - E. Within 360 days of the Effective Date of the Agreement, MWW shall pay \$458,000, plus interest.
 - F. Collectively, the payments described in preceding subparagraphs are referred to as the Settlement Payments.
 - G. If MWW is sold, merged, or transferred, or a significant portion of the assets of MWW is sold, merged, or transferred into another non-affiliated entity, MWW shall promptly notify the United States, and all remaining payments owed pursuant to the Settlement Agreement shall be accelerated and become immediately due and payable.
 - H. There shall be no penalty imposed on MWW for prepayment of the Settlement Amount.
2. Conditioned upon the United States receiving the Settlement Payments and as soon as feasible after receipt, the United States shall pay 10% of each of the Settlement Payments to Relator by electronic funds transfer (Relator's Share).
3. Within 30 days of the Effective Date of the Agreement, MWW will pay to Relator \$15,192 dollars for expenses, attorneys' fees, and costs pursuant to 31 U.S.C. § 3730(d). MWW and Relator agree that this amount represents reasonable expenses, attorneys' fees, and costs for the Civil Action.
4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) and Paragraph 7 (concerning default), below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases

MWW 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 breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for himself and for his/her heirs, successors, attorneys, agents, and assigns, releases MWW 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.

6. Notwithstanding the releases given in Paragraph 4 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 the Agreement, any administrative liability or enforcement right, or any administrative remedy, 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; or
- f. Any liability of individuals.

7. In the event that MWW fails to make its respective Settlement Payments pursuant to the schedule set forth in Paragraph 1, MWW shall be in default of its payment obligations (“Default”). In the event of a Default, the United States will provide a written Notice of Default to MWW (hereinafter, the “Defaulting Party”) and its counsel, by U.S. Certified Mail, at the addresses set forth on the signature page of this Agreement. The Defaulting Party shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. If the Defaulting Party fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the defaulting party’s portion of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance) of the defaulting party’s portion of the Settlement Amount. In the event of an Uncured Default, the Defaulting Party agrees that the United States, at its sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against the Defaulting Party who has defaulted for the claims that would otherwise be covered by the releases provided in Paragraph 2 above, with any recovery reduced by the amount of any payments previously made by the Defaulting Party, as appropriate, to the United States under this Agreement; (ii) take any action to enforce this Agreement in a new action or

by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to the Defaulting Party, and/or affiliated companies by any department, agency, or agent of the United States at the time of the Uncured Default or subsequently; and/or (iv) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common law or in equity. The United States shall be entitled to any other rights granted by law or in equity by reason of the Uncured Default, including referral of this matter for private collection. In the event the United States pursues private collection, the Defaulting Party agrees immediately to pay the United States the greater of (i) a ten percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States opts to rescind this Agreement pursuant to this paragraph, the Defaulting Party waives and 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 (i) filed by the United States against the Defaulting Party within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, except to the extent these defenses were available on the Effective Date of this Agreement. The Defaulting Party agrees not to contest any offset, recoupment, 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.

8. 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.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases MWW, 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.

10. MWW waives and shall not assert any defenses MWW 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.

11. MWW 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 MWW 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.

12. MWW fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that MWW

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.

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

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

15. Upon receipt of the first installment payment described in Paragraph 1(A), above, the Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

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

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

18. 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.

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

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

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

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

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

24. All parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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THE UNITED STATES OF AMERICA

DATED: 11/1/2023

BY:

David V. Simunovich

David V. Simunovich

Assistant United States Attorney

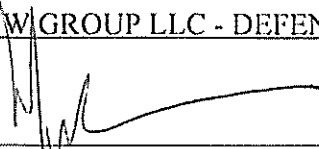
Healthcare Fraud Unit

U.S. Attorney's Office

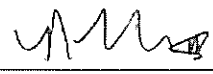
District of New Jersey

MWW GROUP LLC - DEFENDANT

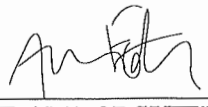
DATED: 10/11/23 BY: _____


Michael Kempner
Chief Executive Officer
MWW Group LLC
1 Meadowlands Plaza
East Rutherford, NJ 07073

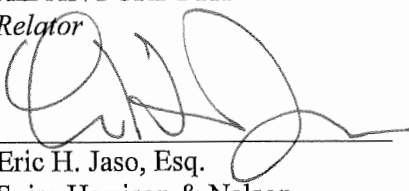
DATED: 10/11/2023 BY: _____


Paul Piantino, Esq.
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1037 Raymond Blvd
Newark, NJ 07102
Counsel for MWW Group, LLC

AIDAN FORSYTH - RELATOR

DATED: 10/27/2023 BY: 

AIDAN FORSYTH
Relator

DATED: 10-27-23 BY: 

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Spiro Harrison & Nelson
363 Bloomfield Avenue
Montclair, NJ 07042
Counsel for Relator