

## 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 Small Business Administration (collectively the “United States”), Seth A. Bernstein, and Victoria Hablitzel (Relator) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

### RECITALS

A. Seth A. Bernstein is the owner of All in Jets, LLC d/b/a JetReady. JetReady is a jet charter operator with its principal place of business in Fort Lauderdale, Florida. On August 9, 2020, JetReady filed a voluntary petition for bankruptcy relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York. *In re: All in Jets, LLC*, 20-bk-11831 (Bankr. EDNY).

B. The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was enacted on March 27, 2020, to provide emergency assistance to individuals, families, and businesses affected by the coronavirus pandemic. Section 1102(a)(2) of the CARES Act amended Section 7(a) of the Small Business Act, 15 U.S.C. §§ 631-657u, to establish the Paycheck Protection Program (“PPP”). 15 U.S.C. § 636(a)(36). The Small Business Administration administers the PPP to provide relief expeditiously to small businesses experiencing economic hardship as a result of coronavirus measures. The Small Business Administration guarantees the PPP loans, and eligible borrowers may qualify for forgiveness of up to the full amount of the loan.

C. Under the requirements of the CARES Act, as modified by the Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (June 5,

2020), a company receiving a loan is required to use 60 percent of the loan proceeds on payroll, and the remaining 40 percent on mortgage or rent payments, utilities, or other obligations as specifically set forth in the Act.

D. On July 13, 2020, Victoria Hablitzel filed a qui tam action in the United States District Court for the District of Southern District of Florida captioned *United States ex rel. Hablitzel v. All in Jets , LLC and Seth A. Bernstein*, No. 20-cv-61420 (Under Seal) pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). Relator alleges that that the defendants misappropriated PPP loan funds.

E. The United States contends that it has certain civil claims against Bernstein arising from his submitting, or causing the submission of, a false loan application and misappropriation of PPP loan funds during the period of April 1, 2020, through October 31, 2020. Specifically, the United States contends:

a. that Bernstein submitted, or caused the submission of, a PPP loan application on behalf of JetReady in which JetReady sought a loan of \$1,173,382. On the loan application, JetReady stated the funds would be used for payroll.

b. JetReady's PPP loan application was approved, and it received the funds in its account on April 27, 2020.

c. On April 28, 2020, Bernstein diverted \$98,929 of the loan proceeds to pay for his personal, non-company related expenses.

That conduct is referred to below as the Covered Conduct.

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

G. 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. Bernstein shall pay to the United States (\$287,055) (Settlement Amount), of which \$98,929, is restitution, plus interest on the Settlement Amount at a rate of 3 percent per annum from August 13, 2021, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the Department of Justice or the United States Attorney's Office for the Southern District of Florida no later than 3 days after the Effective Date of this Agreement.

2. Conditioned upon the United States receiving the Settlement Amount, Paragraph 17, and 91 days having elapsed since payment of the Settlement Amount, and as soon as feasible thereafter, the United States shall pay \$57,411 to Relator by electronic funds transfer (Relator's Share).

3. Bernstein shall pay to McCabe Rabin, P.A. \$66,720.75 and to Nizel Law, P.A. \$12,665.00 in satisfaction of any claims Relator may have for attorney's fees and costs under 31 U.S.C. § 3730(d).

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) and subject to Paragraph 15 (concerning default) and Paragraph 17 (concerning bankruptcy)

below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Bernstein 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 Paragraphs 6 and subject to Paragraphs 15 and 17 below, and upon the United States' receipt of the Settlement Amount plus interest due under Paragraph 1, Relator, for herself and for her heirs, successors, attorneys, agents, and assigns, releases Bernstein and JetReady 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, 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 of individuals, except Bernstein;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;

7. Relator and her 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 her 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.

8. Relator, for herself, and for her heirs, successors, attorneys, agents, and assigns, releases Bernstein, JetReady, 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.

9. Bernstein waives and shall not assert any defenses Bernstein 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.

10. Bernstein 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 Bernstein 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.

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

12. 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 Bernstein and his 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) Bernstein'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 payment Bernstein makes to the United States pursuant to this Agreement and any payments that Bernstein may make to Relator, including costs and attorneys 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 Bernstein, and Bernstein 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, Bernstein shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Bernstein or any of its subsidiaries or affiliates from the United States. Bernstein agrees that the United States, at a minimum, shall be entitled to recoup from Bernstein 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 Bernstein's books and records and to disagree with any calculations submitted by Bernstein or any of its subsidiaries or affiliates regarding any Unallowable

Costs included in payments previously sought by Bernstein, 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. JetReady is not a party to this Agreement, and no provisions in this Agreement may be transferred to JetReady or any other person or entity. Nothing in this agreement affects or limits any liability JetReady may have to the First Bank of the Lake.

14. Bernstein warrants that the payment he makes of the Settlement Amount and interest set forth in Paragraph 1, and any payment to the Relator, are made from his own personal assets and not from any assets in which JetReady owns or has any legal claim of entitlement.

15. In the event that Bernstein fails to pay the Settlement Amount, plus accrued interest, by the time set forth in Paragraph 1, Bernstein shall be in Default of this Agreement. In the event of a Default, the United States will provide written notice of the Default (“Notice of Default”) to Bernstein, and Bernstein shall have an opportunity to cure the Default within seven (7) days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Payment Default will be delivered to John Zach, Esq., Boies Schiller Flexner LLP, by email to [jzach@bsfllp.com](mailto:jzach@bsfllp.com), or to such other representative as Bernstein shall designate in advance in writing. If Bernstein fails to cure the Default within seven (7) 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 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).

a. In the event of Uncured Default, Bernstein 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 Bernstein for the claims that would otherwise be covered by the releases provided in Paragraph 4 above with any recovery reduced by the amount of any payments previously made by Bernstein 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, including the filing of a consent judgment in the Civil Action or a separate action in the amount of \$458,223, in the form of Attachment A, which Bernstein shall sign concurrently with this Agreement; (iii) offset the remaining unpaid balance from any amounts due and owing to Bernstein and/or affiliated companies by any department, agency, or agent of the United States at the time of 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 Default, including referral of this matter for private collection. In the event the United States pursues a collection action, Bernstein 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, Bernstein 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 Bernstein 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 July 13, 2020. Bernstein 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.

16. Upon receipt of the payment described in Paragraph 1, above, the United States and Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The dismissal shall be subject to the terms of the Settlement Agreement, and shall be: (1) with prejudice to the United States and Relator for the Covered Conduct as to Bernstein; (2) with prejudice to the Relator and without prejudice to the United States as to Bernstein for all conduct other than the Covered Conduct; (3) with prejudice to the Relator and without prejudice to the United States as to JetReady.

17. In exchange for valuable consideration provided in this Agreement, Bernstein acknowledges the following:

a. Bernstein has reviewed his financial situation and warrants that he is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and shall remain solvent following payment to the United States of the Settlement Amount.

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Bernstein, within the meaning of 11

U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Bernstein or JetReady was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Bernstein's obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full plus 91 days, Bernstein or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Bernstein's debts, or to adjudicate Bernstein as bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Bernstein or for all or any substantial part of Bernstein's assets; or to void this Agreement or claw back the Settlement Amount payment in the action *In re: All in Jets, LLC*, 20-bk-11831 (Bankr. EDNY):

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Bernstein for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Bernstein in the amount of \$458,223, less any payments received

pursuant to this agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by Bernstein, a receiver, trustee, custodian, or other similar official for Bernstein or JetReady; and

(iii) if any payments are avoided and recovered by Bernstein or JetReady, a receiver, trustee, custodian, or similar official for Bernstein or JetReady, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return any portions of such payments already paid by the United States to Relator pursuant to Paragraph 2.

f. Bernstein agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Bernstein shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Bernstein waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Bernstein that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on July 13, 2020.

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

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

20. 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.

21. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

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

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


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


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

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

27. 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.


THE UNITED STATES OF AMERICA

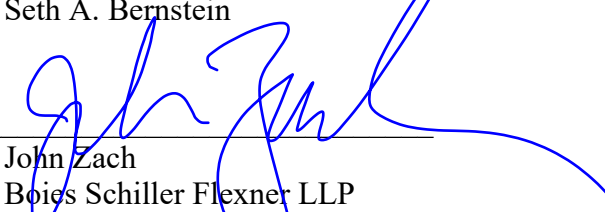
DATED: 8/25/2021 BY:   
Jonathan H. Gold  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 08/23/2021 BY: James A. Weinkle   
James Weinkle  
Assistant United States Attorney  
United States Attorney's Office for the  
Southern District of Florida

Digitally signed by James A. Weinkle  
Date: 2021.08.23 09:30:13 -04'00'

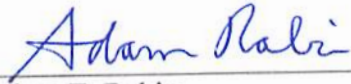
SETH A. BERNSTEIN – DEFENDANT

DATED: 08/24/2021 BY:   
Seth A. Bernstein

DATED: 8/23/21 BY:   
John Zach  
Boies Schiller Flexner LLP  
Counsel for Seth A. Bernstein

Victoria Hablitzel – RELATOR

DATED: 08/20/21 BY:   
Victoria Hablitzel

DATED: 8/11/21 BY:   
Adam T. Rabin  
Counsel for Victoria Hablitzel



ATTACHMENT A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-61410-CIV-ALTONAGA/Strauss

UNITED STATES, <i>ex rel.</i>	)
VICTORIA HABLITZEL,	)
	)
Plaintiff,	)
	)
v.	)
	)
ALL IN JETS, LLC and	)
SETH A. BERNSTEIN,	)
	)
Defendants.	)
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CONSENT JUDGMENT

Plaintiff, the United States of America (“Plaintiff” or the “United States”), Relator Victoria Hablitzel (“Relator”) and Defendant Seth A. Bernstein (“Bernstein”), (Plaintiff, Relator and Bernstein are collectively referred to as the “Parties”), through their undersigned counsel, 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 and 28 U.S.C. § 1345. Defendant Bernstein 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 \_\_ day of \_\_\_\_\_ 2021, Defendant entered into a Settlement Agreement with the United States and Relator for the purpose of resolving certain claims that were the subject of a qui tam complaint filed by Relator under the False Claims Act, 31 U.S.C. §§ 3729, et seq. (the “Settlement Agreement”). A copy of the Settlement Agreement was filed with the Parties’ Stipulation for Dismiss (D.E. \_) and is incorporated by reference in this Consent Judgment.

3. Under the terms of the Settlement Agreement, Defendant Seth A. Bernstein agreed to pay to the United States the sum of \$287,055.

4. Also under the terms of the Settlement Agreement, Bernstein agreed that in the event that it defaulted and failed to pay the Settlement Amount, then within five calendar days of his failure to cure the default pursuant to the cure provisions of the Settlement Agreement, \$458,223, plus interest of 12% beginning on the date the judgment is entered and until paid, shall become due and payable by Bernstein.

5. Under the terms of the Settlement Agreement, Bernstein additionally agreed that in the event that he defaulted and failed to pay the Settlement Amount within five calendar days of his failure to cure the default, the United States may file this Consent Judgment against Bernstein in the amount of \$458,223, plus interest of 5% beginning on the date the judgment is entered and until paid.

6. Bernstein has failed to make payment in accordance with the Settlement Agreement, and therefore is in default under the terms of the Settlement Agreement.

7. The United States has given Bernstein written notice of default under the terms of the Settlement Agreement, and demanded that Bernstein cure that default by tendering payment in full on the cure amount under the terms of the Settlement Agreement. The United States has given Bernstein the appropriate time under the terms of the Settlement Agreement to cure the default, but Bernstein has failed to comply with the terms of the Settlement Agreement.

Accordingly, this Court enters judgment for the United States against Seth A. Bernstein, in the amount of \$458,223.00, plus interest of 12% beginning on the date this judgment is entered and until this judgment is satisfied. All in Jets, LLC is hereby dismissed without prejudice.

**DONE AND ORDERED** in the Southern District of Florida this \_\_\_\_ day of \_\_\_\_\_, 2021.

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**CECELIA M. ALTONAGA**  
**UNITED STATES DISTRICT JUDGE**

**DATE:** \_\_\_\_\_

**Consent to file**

Pursuant to the CM/ECF Administrative Procedures Rule 3J.(3), Adam T. Rabin, Esq., Counsel for Relator and John T. Zach, Esq., Counsel for Defendants, have each consented to the undersigned Assistant United States Attorney's electronic filing of this Joint Stipulation and proposed Order.

Dated:

**BOIES SCHILLER FLEXNER LLP**

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Counsel for Defendants

Respectfully submitted,

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*Counsel for Relator*