

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 National Science Foundation (“NSF”), National Oceanic and Atmospheric Administration (“NOAA”), and National Aeronautics and Space Administration (“NASA”), (collectively the “United States”), the Center for Severe Weather Research (“CSWR”), and Ling Chan and Josh Wurman (the “Wurmans”). The United States, CSWR, and the Wurmans are referred to collectively in this Agreement as “the Parties.”

RECITALS

A. CSWR is a nonprofit entity incorporated in Oklahoma and headquartered in Boulder, Colorado. It engaged in scientific research and, among other sources, relied upon federal grants from NSF, NOAA, and NASA to fund that research.

B. The United States contends that it has certain civil claims against CSWR arising from CSWR’s request for drawdowns from, and use of, federal grant monies from January 1, 2014 through June 30, 2020. The grants at issue are: NSF awards AGS-1759461, AGS-1741712, AGS-1661548, AGS-1447268, AGS-1442054, AGS-1361237, AGS-1259185, AGS-1221132, and AGS-0734001; NOAA awards NA17OAR4590200 and NA18OAR4590314; and NASA awards NNX15AR58G and NNX16AB34G (“Federal Grants”). First, the United States contends that CSWR improperly requested drawdowns from the Federal Grants for expenses it had not incurred, and improperly retained interest accrued on federal funds received but not yet needed. For example, the United States contends that on April 30, 2019, CSWR had sufficient excess federal funds on hand to invest in a \$3 million certificate of deposit. Second, the United States contends

that CSWR had inadequate internal controls, inadequate documentation, and inadequate accounting procedures in place, and was unable to link drawdowns to specific award expenses. Third, the United States contends that CSWR converted significant sums to cash for international projects and failed to maintain adequate documentation of, and controls over, that cash. The United States contends that this conduct amounts to violations of the False Claims Act, 31 U.S.C. §§ 3729-3733. The conduct described in this paragraph is referred to below as the “Entity Covered Conduct.”

C. The United States also contends that, from November 1, 2013 through June 30, 2020, the Wurmans received monthly rent from CSWR in excess of the amount allowed by 2 C.F.R. § 200.465. The United States also identified non-business personal expenses of the Wurmans improperly paid by CSWR. The United States contends that the Wurmans are required to reimburse the United States for these rent overpayments and one personal expense that was not previously reimbursed. The conduct described in this paragraph is referred to below as the “Individual Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by CSWR or the Wurmans, 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 Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. CSWR agrees to a settlement amount of \$2,409,647 (“CSWR Settlement Amount”). CSWR voluntarily repaid NSF grant money in the amount of \$706,904 on August 10, 2020. CSWR will pay the remaining \$1,702,743 of the CSWR Settlement

Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Colorado no later than fourteen (14) days after the Effective Date of this Agreement.

2. The Wurmans agree to repay the United States \$203,766 ("Wurman Settlement Amount"). The Wurmans will pay the Wurman Settlement Amount with personal (i.e., non-CSWR) funds by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of Colorado no later than fourteen (14) days after the Effective Date of this Agreement.

3. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and conditioned upon the United States' timely receipt of the CSWR Settlement Amount, the United States releases CSWR from any civil or administrative monetary claims the United States has for the Entity 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.

4. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and conditioned upon the United States' timely receipt of the Wurman Settlement Amount, the United States releases the Wurmans from any civil or administrative monetary claims the United States has for the Individual Covered Conduct under the common law theories of breach of contract, payment by mistake, unjust enrichment and fraud.

5. Notwithstanding the releases given in Paragraphs 3 and 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 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 Entity Covered Conduct and Individual Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals, other than the Wurmans.

6. CSWR and the Wurmans waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Entity Covered Conduct or the Individual 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.

7. CSWR and the Wurmans 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 CSWR or the Wurmans asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Entity Covered

Conduct or the Individual Covered Conduct and the United States' investigation and prosecution thereof.

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

9. CSWR and the Wurmans agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, CSWR and the Wurmans shall encourage, and agree 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. CSWR and the Wurmans further agree 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 Entity Covered Conduct or the Individual Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

10. This Agreement is intended to be for the benefit of the Parties only.
11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.
12. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.
13. 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 District of Colorado. 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.
14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.
15. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.
16. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.
17. This Agreement is binding on CSWR's and the Wurmans' successors, transferees, heirs, and assigns.
18. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
19. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures, and

scanned and emailed signatures, shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 10/1/21

BY: ANDREA WANG
Andrea Wang
Assistant United States Attorney
District of Colorado

Digitally signed by
ANDREA WANG
Date: 2021.10.01
15:47:06 -06'00'

CENTER FOR SEVERE WEATHER RESEARCH

DATED: _____

BY: _____
Joshua Wurman, President
Center for Severe Weather Research

THE WURMANS

DATED: _____

BY: _____
Joshua Wurman

DATED: _____

BY: _____
Ling Chan

Approved as to Form:

DATED: _____

BY: _____
Bret Wacker
Counsel for Center for Severe Weather Research
and the Wurmans

scanned and emailed signatures, shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____
Andrea Wang
Assistant United States Attorney
District of Colorado

CENTER FOR SEVERE WEATHER RESEARCH

DATED: _____

BY: _____
Joshua Wurman, President
Center for Severe Weather Research

THE WURMANS

DATED: _____


BY: _____
Joshua Wurman

DATED: _____

BY: _____
Ling Chan

Approved as to Form:

DATED: October 4, 2021

BY:  _____
Bret Wacker
Counsel for Center for Severe Weather Research
and the Wurmans

scanned and emailed signatures, shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: _____

BY: _____

Andrea Wang
Assistant United States Attorney
District of Colorado

CENTER FOR SEVERE WEATHER RESEARCH

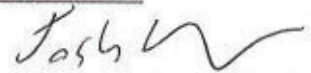
DATED: 10/1/2021

BY: 

Joshua Wurman, President
Center for Severe Weather Research

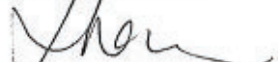
THE WURMANS

DATED: 10/1/2021

BY: 

Joshua Wurman

DATED: 10/1/2021

BY: 

Ling Chan

Approved as to Form:

DATED: _____

BY: _____

Bret Wacker
Counsel for Center for Severe Weather Research
and the Wurmans