

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 ("SBA") (collectively "the United States") and Robert Michael Waters Jr. ("Waters") and Westville Remarketing, Inc. ("Westville"), hereafter collectively referred to with the United States as the "Parties," through their authorized representatives.

RECITALS

A. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, in March 2020, authorized Economic Injury Disaster Loans (EIDLs) to small businesses and non-profit organizations experiencing substantial financial disruption due to the COVID-19 pandemic. EIDLs are not forgivable. EIDLs must be used to cover legitimate business expenses such as rent, utilities, and fixed debt payments.

B. Robert Waters is a resident of New Hampshire.

C. Robert Waters, on April 7, 2020 submitted an application for an EIDL loan for \$40,000 on behalf of the company Westville Remarketing Inc., of which he was a 50% owner. On December 27, 2021, he applied for a modification of the original EIDL loan for an additional \$343,800, bringing the total loan amount to \$383,800.

D. On December 31, 2021, four days later, he created the business entity Waters Edge Marinas LLC.

E. On January 3, 2022, Waters submitted to the SBA an Amended Loan Authorization and Agreement and other documents in connection with that EIDL modification. He represented and certified in the Amended Loan Authorization and Agreement that "Borrower

will use all the proceeds of this Loan solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31, 2020 and continuing thereafter. . . .”

F. On January 10, 2022, after approving the EIDL application and receiving the Amended Loan Authorization and Agreement electronically signed by Waters and other related documents, the SBA deposited \$343,800 in a bank account associated with Westville.

G. On February 15, 2022, just over one month after receiving the EIDL proceeds from the SBA, Waters transferred \$340,000 of the EIDL proceeds from Westville Remarketing Inc.’s bank account to another bank account in the name of AMC Financial Services Inc., an entity wholly owned and controlled by Waters. Later that day, Waters applied that \$340,000 to the purchase of a 2008 62E Azimut yacht called “Alisa” (the “Yacht.”). The Yacht is listed as registered to Waters Edge Marinas LLC.

H. The United States contends that it has certain civil claims against Waters and Westville arising from their EIDL application and misuse of EIDL funds. The United States contends that Waters and Westville misrepresented that they planned to use the EIDL funds for working capital to alleviate economic injury but instead intended to use \$340,000 of the EIDL funds to purchase a yacht. The United States further contends that Waters and Westville did, in fact, misuse \$340,000 of the EIDL funds in purchasing the yacht. The United States further contends that the Waters and Westville violated the False Claims Act, 31 U.S.C. §§ 3729-3733. This conduct is referred to below as the “Covered Conduct.”

I. Waters and Westville deny the United States’ allegations in Paragraph H.

J. This Settlement Agreement is neither an admission of liability by Waters and Westville, 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. Waters shall pay to the United States the proceeds from the below-described sale of the Yacht plus an additional \$150,000 in cash (collectively the "Settlement Amount"), \$340,000 of which is restitution, as follows:

a. Waters will pay \$150,000 in three payments by electronic funds transfer within 90 days of the effective date of this Agreement, pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Hampshire. The first payment of \$50,000 will be made by no later than ten days after the effective date of this Agreement. The second payment of \$50,000 will be made by no later than sixty days after the effective date of this Agreement. The third payment of \$50,000 will be made by no later than ninety days after the effective date of this Agreement.

b. The remainder of the Settlement Amount will be equal to and paid from the disposition of the Yacht, a 2008 62E Azimut Yacht, Hull ID: XAX62172B808, named Alisa, owned by Waters, and currently in the possession of the United States Marshals Service ("USMS"). Waters agrees that USMS shall continue to have custody of the Yacht, and shall arrange for, and shall have sole control of, the sale of the Yacht. The USMS may, among other things, retain professionals in its efforts to sell the Yacht. The USMS shall have sole discretion in negotiating, accepting, and rejecting offers for the Yacht. Waters further agrees that he will take all steps to promptly effectuate this disposition, including but not limited to signing all sales

documents that effectuate transfer of ownership of the Yacht to the buyer of the Yacht and signing all agreements with the vendor and broker selected by USMS. Waters further agrees that USMS, and its vendor and broker will deduct from the proceeds of the sale of the yacht: expenses of seizure, custody, maintenance, storage, and disposal, including any advertising and commissions; any vendor or broker fees; any taxes imposed by any federal, state, or local government against the Yacht; and any liens secured against the Yacht which are not contested by the Government. Waters further agrees that the USMS is authorized to and will pay the entire balance/net proceeds of the sale to the U.S. Department of Justice ("DOJ").

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the full Settlement Amount, the United States releases the Waters Parties 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 Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the releases given in Paragraph 2 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, 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; and
- f. Any liability of individuals other than those named as parties to this Agreement.

4. \$340,000 of the Settlement Amount shall be applied toward the outstanding balance of Loan #4488548000 between Westville and the Small Business Administration, which as of March 8, 2024 is \$390,693.75, and is accruing interest at the rate of \$39.43 per day. Westville shall be liable for paying the remaining balance of that loan after the application of the \$340,000 payment.

5. Waters and Westville waive and shall not assert any defenses they 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. Waters and Westville 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 Waters and Westville 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.

7. Waters and Westville agrees to the following:

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 Waters, Westville, and Westville'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) Waters' 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 payments Waters 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 Waters and Westville, and Waters and Westville 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, Waters and Westville shall identify and repay by adjustment to future claims, for payment or otherwise, any Unallowable Costs included in payments previously sought by Waters and Westville from the United States.

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

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

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

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

11. 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 Hampshire. 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.

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

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

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

15. This Agreement is binding on Waters' and Westville's successors, transferees, and assigns.


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

17. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles and electronic transmissions of signatures shall constitute acceptable, signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

JANE E. YOUNG
United States Attorney

Dated: 3/28, 2024

By: 
Raphael Katz
Assistant U.S. Attorney
U.S. Attorney's Office
District of New Hampshire


Dated: 03/20, 2024

By: Matthew Zohn for MR Waters
Robert Michael Waters, Jr. in his individual
capacity

Dated: 03/20, 2024

By: Matthew Zohn for MR Waters
Robert Michael Waters, Jr.
on behalf of Westville Remarketing Inc.

Dated: 3/20, 2024

By: 
James P. O'Rourke, Esquire
Counsel for Robert Michael Waters, Jr. and
Westville Remarketing Inc.

Dated: March 27, 2023

By: Robert M. Waters, Jr.

Robert Michael Waters, Jr. In his individual Capacity

Dated: March 27, 2023

By: Rob Waters, Jr.

Robert Michael Waters Jr.

On Behalf of Westville Remarketing Inc.