

FORBEARANCE AGREEMENT

This Forbearance Agreement (this “**Agreement**”) is entered into as of the ___ day of June, 2022, by and between, Pennsylvania Lawyers Fund for Client Security located at 601 Commonwealth Avenue, Suite 5400, PO Box 62585 Harrisburg, PA 17106 (“**Plaintiff**”) and, **Michael E. McHale**, an individual with a mailing address of **142 Elizabeth Street Millersville, PA 17551** (“**Defendant**”).

BACKGROUND

A. On December 18, 2020 Plaintiff filed a Writ of Summons against Defendant in the Court of Common Pleas, Dauphin County, No. 2020-CV-12160-CV (“**Action**”). Plaintiff is owed \$35,065.00 for reimbursement made to respective Claimants plus accrued interest at the rate of ten percent (10%) per annum from the date the Plaintiff paid the amount to each Claimant and the costs incurred to collect said amounts from Defendant.

B. On February 22, 2022, Plaintiff filed a Civil Complaint in the Court of Common Pleas, Dauphin County in the aforementioned action. Defendant failed to enter a written appearance.

C. Plaintiff asserts in the Action that it is owed \$35,065.00 (“**Principal**”) for reimbursement made to various former clients whose claims were made to and approved and paid by Plaintiff (“**Claimants**”) plus accrued interest on the unpaid balance of the Principal, at the rate of ten percent (10%) per annum pursuant to Rule 531 of the Pennsylvania Rules of Disciplinary Enforcement from the date the Plaintiff paid the amount to each Claimant (which interest is recalculated each time a claim is paid by Plaintiff or a payment is made by Defendant to Plaintiff) plus the costs incurred to collect said amounts from Defendant.

D. On June 30, 2022, the Parties executed a Stipulated and Agreed Upon Order for Judgment in the Court of Common Pleas, Dauphin County, in the amount of Thirty-Five Thousand Sixty-Five Dollars and No Cents (\$35,065.00) plus accrued interest in the amount of Four Thousand Six Hundred Seventy-Seven Dollars and Sixty-One Cents (\$4,677.61), a total of Thirty Nine Thousand Seven Hundred Forty Two and Sixty-One Cents \$39,742.61 as of June 30, 2022, plus continuing interest at the rate of ten percent (10%) per annum (“**Judgment**”).

E. The Parties have agreed to enter into a Forbearance Agreement in connection with the Judgment.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto, intending to be legally bound, agree as follows:

1. **Incorporation of Background.** The Background of this Agreement, consisting of paragraphs A through E, is incorporated herein by reference as though fully set forth in this Paragraph 1.

2. **Ratification of the Judgment.**

Defendant hereby ratifies and confirms, and reaffirms in all respects, the Judgment and

hereby agrees that he remains liable to Plaintiff in accordance with the respective terms, covenants, and conditions of the Judgment.

3. Confirmation of Indebtedness.

Defendant hereby unconditionally acknowledges and confirms that the unpaid amount of Judgment as of June 30, 2022 is \$39,742.61. The Defendant further acknowledges and confirms that the Judgment is validly evidenced by the Judgment documents. Defendant further acknowledges and confirms that the full amount of the Judgment (plus accrued interest) is owed to Plaintiff without claim, counterclaim, right to recoupment, defense or setoff of any kind or of any nature whatsoever.

4. Payments/Payoff.

- a. Plaintiff and Defendant have agreed to a payment schedule for Defendant to satisfy the Judgment, filing fees and interest at the rate of ten percent (10%) per annum. So long as Defendant is not in breach of this Forbearance Agreement, Plaintiff will forbear in executing on the Judgment.
- b. Starting on June 30, 2022 and continuing on the last day of each succeeding month, Defendant shall make monthly payments on account of the Judgment of Five Hundred Dollars and No Cents (\$500.00).
- c. Defendant will make the payments of \$500.00 each month payable to:

PA Lawyers Fund for Client Security
Pennsylvania Judicial Center
PO Box 62585
Harrisburg, PA 17106
- d. Upon the successful receipt of the payment schedule set forth above, Plaintiff shall mark the Judgment satisfied, if it has not yet expired on its own terms.

5. Defendant's Financials/Annual Review.

Defendant has produced, as of the date hereof, and shall produce to Plaintiff, annually, a Personal Financial Statement, to include all Assets and Liabilities, Income and Expenses (for the Prior Year) and the prior year's Federal Income Tax Return. Plaintiff shall have the right to amend the payment schedule set forth above in Paragraph 4 annually until the Judgment is paid in full. Upon Plaintiff's review of Defendant's documentation and any additional circumstances Defendant wishes for Plaintiff to consider, Plaintiff, in its sole discretion, may adjust the monthly payment under this Forbearance Agreement by up to 50% each year.

6. Forbearance.

So long as there is no default in the making of timely payments as set forth in Paragraph 4 above, as adjusted pursuant to Paragraph 5, and there has been no other Event of Default (as

defined below), Plaintiff shall temporarily forbear from enforcing its rights and remedies under and/or executing upon the Judgment.

7. Representations and Warranties.

Defendant further represents and warrants to Plaintiff as follows:

- a. The Defendant has all the requisite power, authority and capacity to enter into and perform this Agreement, and all other documents and instruments described herein; and
- b. This Agreement, and all other documents and instruments described herein, when executed and delivered, will be valid, binding and enforceable against the Defendant in accordance with their respective terms; and
- c. The delivery, execution and performance of this Agreement by the Defendant will not violate or contravene any provision of any existing law or regulation or decree of any court, governmental authority, bureau or agency.

8. Default.

The occurrence of any one or more of the following events (“Events of Default”) shall constitute a default under this Agreement:

- a. The failure by the Defendant to comply with any term, condition, or covenant contained in this Agreement; and
- b. The failure by the Defendant to provide, when required, any of the statements, reports, or other financial information required to be provided in this Agreement; and
- c. Any statement, representation or warranty made by the Defendant in this Agreement, or any financial statements or other documents furnished by the Defendant, or his representatives, to the Plaintiff, shall prove to have been false or misleading when made; and
- d. The application by the Defendant for, or the appointment of, a receiver or trustee over any of the affairs or assets of the Defendant; and
- e. The attachment, garnishment, levy, writ of execution or other legal process against the Defendant.

9. Remedies.

Upon the occurrence of any one or more Event of Default, and at any time thereafter, Plaintiff, at their option, may, without further notice or demand:

- a. Terminate the forbearance provided under this Agreement; and
- b. File the Judgment pursuant to the Confession of Judgment Clause below and issue a writ of execution on the Judgment; and
- c. Set off against any and all deposit accounts of the Defendant; and
- d. Exercise any and all other rights and remedies the Plaintiff may have at law or in equity.

10. **Confession of Judgment.**

THE DEFENDANT HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS THE PLAINTIFF, BY ITS ATTORNEY, OR THE PROTHONOTARY OR THE CLERK OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA OR IN ANY JURISDICTION WHERE PERMITTED BY LAW, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, OR AT ANY TIME THEREAFTER, AND UPON THE FILING OF AN AFFIDAVIT OF DEFAULT SETTING FORTH THE EVENT OF DEFAULT TO APPEAR FOR THE DEFENDANT, AND CONFESS AND ENTER JUDGMENT AGAINST HIM IN FAVOR OF PLAINTIFF IN ANY JURISDICTION IN WHICH THE DEFENDANT OR ANY OF THEIR PROPERTY IS LOCATED FOR THE AMOUNT OF ALL OBLIGATIONS, TOGETHER WITH COSTS OF SUIT AND WITH ACTUAL COLLECTION COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) WITH OR WITHOUT DECLARATION, AND WITHOUT STAY OF EXECUTION FORTHWITH, AND FOR DOING SO THIS AGREEMENT OR A COPY VERIFIED BY AFFIDAVIT SHALL BE SUFFICIENT WARRANT. THE DEFENDANT HEREBY WAIVES AND RELEASES ALL RELIEF FROM ANY AND ALL APPRAISEMENT, STAY OR EXEMPTION LAW OF ANY STATE NOW IN FORCE OR HEREAFTER ENACTED. THIS AUTHORITY AND POWER SHALL NOT BE EXHAUSTED BY THE EXERCISE THEREOF AND SHALL CONTINUE UNTIL THE OBLIGATIONS ARE FULLY PAID, PERFORMED, DISCHARGED AND SATISFIED.

THE DEFENDANT ACKNOWLEDGES THAT HE HAS HAD OPPORTUNITY FOR ASSISTANCE OF COUNSEL IN THE REVIEW AND EXECUTION OF THIS NOTE AND FURTHER ACKNOWLEDGES THAT THE MEANING AND EFFECT OF THE FOREGOING PROVISIONS CONCERNING CONFESSION OF JUDGMENT HAVE BEEN FULLY EXPLAINED TO THE DEFENDANT BY COUNSEL, IF ANY.

DEFENDANT'S INITIALS _____.

11. Acknowledgements. The Defendant hereby confirms and acknowledges that:

- a. The Plaintiff is currently entitled to exercise all rights and remedies available to the Plaintiff at law or in equity; and
- b. There are no existing defenses, claims, counterclaims, or rights of recoupment or setoff against the Plaintiff in connection with the negotiations, preparation, execution, performance or any other matters relating to this Agreement; and
- c. The Plaintiff has no obligation to enter into any other instruments, agreements or documents regarding any of the same with the Defendant; and
- d. The Plaintiff has not made any agreements with or commitments or representations or warranties to the Defendant with respect to this Agreement (either in writing or orally) other than as expressly stated in this Agreement; and
- e. The Plaintiff is relying on all of the terms, covenants, conditions, warranties and representations set forth in this Agreement as a material inducement to the Plaintiff to enter into this Agreement; and
- f. This Agreement is not and shall not be deemed to be a waiver of the Judgment.

12. Release of Plaintiff.

For and in consideration of the Plaintiff's agreement to forbear, and for the other agreements of the Plaintiff set forth in this Agreement, the Defendant hereby waives, remises, releases and forever discharges the Plaintiff, its officers, directors, shareholders, employees, agents, and attorneys, and their respective successors, assigns and heirs, shareholders, employees, and agents from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, whatsoever in law, admiralty or equity, whether known or unknown, against the Plaintiff, which the Defendant, his heirs, partners, executors, administrators, successors, and assigns, ever had, now have, or hereafter can, shall, or may have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement. The release set forth in this paragraph shall survive the termination of this Agreement.

13. Non-Dischargeability in Bankruptcy

Defendant agrees that the Judgment is not dischargeable in Bankruptcy, as the underlying conduct and basis for the Judgment fits within the definitions and implicates the provisions of 11 U.S.C. 523 (a)(2), (a)(4), and/or (a)(7).

14. No Novation.

All such instruments, agreements and documents shall be construed as integrated and complimentary of each other, and as augmenting and not restricting the Plaintiff's rights, remedies, benefits, and security. Nothing contained in this Agreement is intended to, nor shall it be deemed to, nullify, discharge, or release any obligation incurred in connection with the Judgment; and

15. Entire Agreement.

This Agreement, the Judgment, and the documents and instruments referred to herein and therein contain the entire agreement of the parties hereto with respect to the matters covered and the transactions contemplated hereby. No modification or waiver of any provision of this Agreement or Judgment, and no consent by the Plaintiff to any departure therefrom, shall in any event be effective unless the same shall be in writing, and in such event, such waiver or consent shall be effective only with respect to the specific instance and for the purpose which is therein specified; and

16. Severability.

Any provision contained in this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability only, without invalidating the provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and

17. Notices.

All notices, requests, approvals, consents, and other communications required, made or given in connection with this Agreement shall be in writing and shall be deemed validly given if mailed, certified mail, return receipt requested or via overnight delivery, addressed as follows, or personally delivered to the individual to whose attention notices are to be addressed:

If to the Plaintiff:

PA Lawyers Fund for Client Security
c/o Kathryn Peifer Morgan, Esq., Executive Director and Counsel
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5400
PO Box 62585
Harrisburg, PA 17106

With a copy to:

Bruce J. Warshawsky, Esquire
Cunningham, Chernicoff & Warshawsky, P.C.

2320 North Second Street
Harrisburg, PA 17110

If to the Defendant:

Michael E. McHale
142 Elizabeth Street
Millersville, PA 17551

18. Governing Law.

This Agreement shall be governed and construed by the laws of the Commonwealth of Pennsylvania without regard to its principles pertaining to conflicts of laws of laws, with exclusive venue in Dauphin County; and

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by affixing their signatures and the date of execution where indicated below.

PLAINTIFF:

Dated: _____

By _____
Pennsylvania Lawyers Fund for Client Security

Its _____

DEFENDANT:

Dated: _____

Michael E. McHale