



NATIONAL SCIENCE FOUNDATION  
OFFICE OF INSPECTOR GENERAL  
OFFICE OF INVESTIGATIONS

## CLOSEOUT MEMORANDUM

Case Number: I-09080053

Page 1 of 1

We received a complaint from a NSF Program Officer claiming that a proposal was submitted to NSF by a Principal Investigator (PI)<sup>1</sup> through his company<sup>2</sup> that was substantially similar to a proposal that had been previously awarded by NASA. NASA-OIG had initiated an investigation of the PI and we joined their ongoing investigation. After reviewing the NSF and NASA proposals, NSF declined to fund the proposal.

NASA-OIG and NSF-OIG conducted a joint investigation and found that the PI submitted false statements about his primary employment with his company and about the similarity of SBIR proposals submitted to NASA and NSF. The case was accepted for criminal prosecution by the United States Attorney's Office in the Southern District of Mississippi where NASA had issued SBIR payments to the company.

On November 2, 2011, the PI plead guilty to Wire Fraud charges, 18 U.S.C. § 1343 and was ordered to pay \$133,433.33 in fines and penalties, 3 years probation, and 100 hours of community service.<sup>3</sup>

On December 23, 2011, NASA issued a Notice of Proposed Debarment for 3 years to the PI and his company. Subsequently, on March 8, 2012, NASA debarred the PI and his company until December 22, 2014.<sup>4</sup>

This case is **closed** with no further action taken.

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<sup>1</sup> Michael Pottenger.

<sup>2</sup> SmartWear LLC.

<sup>3</sup> Judgment is attached.

<sup>4</sup> EPLS entry is attached.

UNITED STATES DISTRICT COURT

Southern District of Mississippi

UNITED STATES OF AMERICA  
 v.  
 MICHAEL D. POTTENGER

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:11cr56WJG-RHW-1

USM Number: 60949-112

Robert E. Hauberg, Jr.

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) 2 of the Indictment
- pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.
- was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1343	Wire Fraud	1/24/2009	2

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) \_\_\_\_\_
- Count(s) 1, 3, 4 & 5  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 2, 2011  
Date of Imposition of Judgment

Walter J. Gex III  
Signature of Judge

Walter J. Gex III - United States Senior District Judge  
Name and Title of Judge

November 2, 2011  
Date

DEFENDANT: POTTENGER, Michael D.  
CASE NUMBER: 1:11cr56WJG-RHW-1

### PROBATION

The defendant is hereby sentenced to probation for a term of :

Three years.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: POTTENGER, Michael D.  
CASE NUMBER: 1:11cr56WJG-RHW-1

### SPECIAL CONDITIONS OF SUPERVISION

1. Defendant shall provide the United States Probation Office [USPO] with access to any requested financial information.
2. Defendant shall not incur new credit charges or open additional lines of credit without the approval of the USPO unless Defendant is in compliance with the installment payment schedule.
3. Defendant shall complete 100 hours of community service work within the first year of supervision. Defendant shall perform the community service work at specific times agreed upon with the approved community service agency and USPO. Defendant is responsible for providing verification of completed hours to the USPO.
4. Defendant shall pay any restitution that is imposed by this Judgment.

DEFENDANT: POTTENGER, Michael D.  
CASE NUMBER: 1:11cr56WJG-RHW-1

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ waived	\$ 133,333.33

The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
NSSC-FMD Accounts Receivable Attn: For the Account of Headquarters of Chief Engineer Building 1111, C Road Stennis Space Center 39539		133,333.33	

<b>TOTALS</b>	\$ _____	\$ _____	133,333.33
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Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: POTTENGER, Michael D.  
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### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 133,433.33 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:  
 Special assessment and restitution due immediately, with any unpaid balance payable at the rate of not less than \$500 per month, with the first payment becoming within 30 days after sentencing. In ordering monthly payments, the court acknowledges Defendant does not have the present ability to pay restitution in full during his period of probation. Prior to discharge from supervision, Defendant shall make satisfactory arrangement for the payment of any balance outstanding on this restitution with the United States Financial Litigation Unit and the United States Probation Office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

# EPLS

## Excluded Parties List System



**Search - Current Exclusions**

- > Advanced Search
- > Multiple Names
- > Exact Name and SSN/TIN
- > MyEPLS
- > Recent Updates
- > Browse All Records

**View Cause and Treatment Code Descriptions**

- > Reciprocal Codes
- > Procurement Codes
- > Nonprocurement Codes

**Agency & Acronym Information**

- > Agency Contacts
- > Agency Descriptions
- > State/Country Code Descriptions

**OFFICIAL GOVERNMENT USE ONLY**

- > Debar Maintenance
- > Administration
- > Upload Login

**EPLS Search Results**

Results 1 - 1 of 1

**Resources**

- > Search Help
- > Advanced Search Tips
- > Public User's Manual
- > FAQ
- > Acronyms
- > Privacy Act Provisions
- > News
- > System for Award Management (SAM)

**Reports**

- > Advanced Reports
- > Recent Updates
- > Dashboard

**Archive Search - Past Exclusions**

- > Advanced Archive Search
- > Multiple Names
- > Recent Updates
- > Browse All Records

**Contact Information**

- > For Help: Federal Service Desk

**Search Results for Parties Excluded by**

**Individual : Michael Pottenger**  
 As of 19-Mar-2012 1:03 PM EDT  
 Save to MyEPLS

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# A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

**Name** Pottenger, Michael D, Mr.  
**Classification** Individual  
**Exclusion Type** Reciprocal  
**Description** none

**Address(es) --**  
 Verify Street 1   
 Verify Street 2   
**Address DUNS** Santa Monica, CA, 90405  
 none

**CT Action(s) --**  
**Action Date** 23-Dec-2011  
**Termination Date** Indef.  
**CT Code** A1  
**Agency** NASA  
**Agency POC** NASA Contacts  
**EPLS Create Date** 23-Dec-2011  
**EPLS Modify Date** 04-Jan-2012

**Action Date** 08-Mar-2012  
**Termination Date** 22-Dec-2014  
**CT Code** A  
**Agency** NASA  
**Agency POC** NASA Contacts  
**EPLS Create Date** 08-Mar-2012  
**EPLS Modify Date**

**Cross Reference(s) --**

Name	Action Date	Term Date	CT Code
1.SMARTWEAR, LLC (Primary Record)	23-Dec-2011	Indef.	A1
	08-Mar-2012	22-Dec-2014	A

Record History

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# A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

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