

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION OF ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF THE STATE OF NEW YORK OF

AOD # 13-491

3683 WASHINGTON HEIGHTS PIZZA, LLC; and
ROBERT COOKSTON.

ASSURANCE OF DISCONTINUANCE

In December 2013, after previously having commenced a separate investigation of Domino's franchise stores owned and/or operated by Robert Cookston, including 3683 Washington Heights Pizza, LLC, located at 736 West 181st Street, New York, NY 10033 ("the Washington Heights Store"), the Office of Attorney General of the State of New York ("the Attorney General") received complaints that the employment of twenty five (25) employees at the Washington Heights Store had been terminated during the evening of December 7, 2013. The Attorney General conducted a preliminary inquiry, pursuant to New York Executive Law § 63(12), of, *inter alia*, the Washington Heights Store and Robert Cookston (collectively the "Respondents"), regarding whether Respondents violated New York Executive Law § 63(12) and New York Labor Law § 215, which prohibits retaliation by an employer against an employee because, among other things, such employee has made a complaint to his or her employer or any other person that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates the New York Labor Law.

This Assurance of Discontinuance ("Assurance") contains the Attorney General's Findings in connection with its preliminary investigation of the complaints alleging the

termination of 3683 Washington Heights Pizza employees on or around December 7, 2013, operating at 736 West 181st Street, New York, NY 10033 ("the retaliation investigation") and the relief agreed to by the Attorney General and Respondents ("the parties"). This Assurance resolves only the retaliation investigation, and does **not** resolve the Attorney General's investigation of potential violations of state and federal labor law by Respondents and other Domino's franchise stores owned by Robert Cookston; that broader investigation remains ongoing and is unaffected by this Assurance.

DEFINITIONS

1. As used throughout this Assurance, the terms set forth below shall mean as follows:
 - a. "Washington Heights Store" means 3683 Washington Heights Pizza, LLC, located at 736 West 181st Street, New York, NY 10033. "Respondents" means the Washington Heights Store and its owner, Robert Cookston.
 - b. "Washington Heights Store Employees" means the employees whose names appear on Appendix A to this Assurance.
 - c. "Domino's" means Domino's Pizza LLC and/or Domino's Pizza Distribution LLC, Domino's Pizza Franchising LLC, and Domino's Pizza Master Issuer LLC.
 - d. "Domino's franchise store" means any Domino's store or stores owned or operated by Respondents pursuant to a franchise agreement with Domino's Pizza LLC and/or Domino's Pizza Distribution LLC, Domino's Pizza Franchising LLC, and Domino's Pizza Master Issuer LLC.
 - e. "Effective Date" means the date this Assurance is fully executed by the parties hereto.
 - f. Terms of construction:

- i. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
- ii. “All” means “any and all” and “any” means “any and all.”
- iii. “Concerning” means relating to, referring to, describing, evidencing, regarding, reflecting or constituting.
- iv. “Including” means without limitation.
- v. The use of the singular form of any word includes the plural and vice versa.
- vi. “Day” refers to a calendar day, not a business day.

FINDINGS

2. Washington Heights Store is a Domino's franchise store that is located at 736 West 181st Street, New York, NY 10033, and employs individuals who, *inter alia*, prepare and deliver food and beverages to customers of the Washington Heights Store ("Washington Heights Store Employees" or the "employees").
3. Washington Heights Store is owned and/or operated by Robert Cookston, who also owns and/or operates a number of other Domino's franchise stores, with several located in New York State, including but not limited to 3456 Hamilton Heights Pizza, LLC; 3469 Mastic Pizza, LLC; 3489 Riverhead Pizza, LLC; 117 Mineola Ave. LLC; 1017 Jericho Tpke, LLC; Sestwon Pizza, LLC; 1872a Bellmore Ave., LLC; Cookston Enterprises, Inc.; 3683 Washington Heights Pizza, LLC; Mumbuh Style Pizza, Inc.; and Hat Trick Pizza, Inc., ("Cookston New York Domino's Stores").
4. On or around October 16, 2013, the Attorney General issued subpoenas to the Cookston New York Domino's Stores, regarding whether those entities were operating in violation

of numerous state and federal laws, including but not limited to: New York Executive Law § 63(12); the New York Labor Law and its attendant regulations; and the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* and its attendant regulations, relating to, *inter alia*, the proper payment of the hourly minimum and overtime wages for all work hours. That investigation is still ongoing.

5. The Office of the Attorney General subsequently received complaints that on or around December 7, 2013, the employment of twenty five (25) Washington Heights Store Employees was terminated following a dispute precipitated by employee complaints regarding, among other things, performing non-tipped work while earning a tipped rate.
6. On or around December 10, 2013, the New York Office of Attorney General commenced a preliminary investigation of the complaints relating to the events of December 7, 2013 to determine whether the Washington Heights Store and/or Robert Cookston violated Section 215 of the New York Labor Law and 29 U.S.C. § 215. Because the parties are entering into this Assurance of Discontinuance, the Attorney General has not concluded that investigation, including that the Attorney General has not yet interviewed persons whom the Respondents assert would state that employees walked out.

PROSPECTIVE RELIEF

WHEREAS, New York State Labor Law Section 215 and 29 U.S.C. § 215 protect employees from retaliation and provide remedies to employees for an employer's failure to comply therewith; and

WHEREAS, the Attorney General conducted a preliminary investigation of whether the complaints relating to the events of December 7, 2013 were in violation of the aforementioned

laws but did not conclude that investigation because the parties are entering into this Assurance of Discontinuance;

WHEREAS, the Washington Heights Store neither admits nor denies the Attorney General's findings set forth herein; and

WHEREAS, the parties wish to resolve the matter expeditiously; and

WHEREAS, the Attorney General is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue this investigation of whether Respondents have violated New York Labor Law § 215 and 29 U.S.C. § 215 on or around December 7, 2013; and

WHEREAS, this Assurance does not in any way impact, affect, impair, discontinue, or terminate the Attorney General's still-ongoing and active Executive Law § 63(12) investigation, referred to in Paragraph 4 of this Assurance, of potential violations of state and federal law by Respondents and any other Cookston New York Domino's Store; and

WHEREAS, the parties believe that the obligations imposed by this Assurance are prudent and appropriate; and

WHEREAS, the employer is represented by counsel, Robin B. Kallor, Esq., of Rose Kallor, LLP, located at 750 Main Street, Suite 606, Hartford, Connecticut 06103;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Respondents the Washington Heights Store, Robert Cookston and the Attorney General, as follows:

7. This Assurance binds, jointly and severally, the Washington Heights Store, Robert Cookston and their principals, directors, beneficial owners, officers, shareholders, successors, assigns, including but not limited to "d/b/a" companies.

8. Respondents hereby acknowledge that they have read and understood the requirements of New York Labor Law, and that Respondents will refrain from engaging in any activity in violation of New York Labor Law § 215 and/or 29 U.S.C. § 215.
9. Respondents agree that they shall not in any manner discriminate or retaliate against any employees for making good faith complaints regarding violations of the New York Labor law.
10. No later than Sunday, December 15, 2013, all twenty five (25) Washington Heights Store employees listed on the appended Appendix A ("the 25 employees") shall be reinstated into their previous positions held on or before December 7, 2013, at the same terms and conditions with at least substantially the same hours per week and hourly wage rates that they held before December 7, 2013.
11. To communicate the offer of reinstatement, no later than 5:00 p.m. on Friday December 13, 2013, Respondents will take the following steps: (a) Call each of the 25 employees listed at his or her last known telephone number(s); (b) Mail a letter offering reinstatement to the last known address of any of the 25 employees who has not previously been sent an offer of reinstatement; and (c) Upon execution of this Assurance, provide the Attorney General with a letter offering reinstatement to all of the 25 employees, so that the Attorney General may also make attempts to inform the employees of the offer of reinstatement.
12. No later than close of business on Monday, December 16, Respondents will provide to the Attorney General with copies of the letters required by paragraph 11(b) above, as well as proof of mailing. In addition, Respondents will provide the Attorney General with copies of time and payroll records for the Washington Heights Store covering the pay

period starting Sunday, December 15 no later than three days after the conclusion of that pay period.

13. If any Washington Heights Store employee who desired to be reinstated has not been reinstated by Sunday December 15, Respondents will pay the Attorney General \$5,000 in penalties, \$5,000 in liquidated damages, and an amount in restitution equal to all lost compensation including backpay for each such Washington Heights Store employee, *provided*, that the Attorney General shall first have provided written notice to counsel for Respondents identifying the Washington Heights Store employee(s) who have not been reinstated and Respondents shall have one day to cure. However, this provision shall not apply once Respondents have complied with the requirements of Paragraphs 10 through 12.
14. Any payments required pursuant to paragraph 13 of this Assurance of Discontinuance must be in the form of a certified check, bank check, money order, or attorney's check made payable to "The New York State Attorney General's Office," and forwarded to the New York State Attorney General's Office to the attention of Andrew Elmore, Section Chief, Labor Bureau, 120 Broadway, 26th Floor, New York, New York, 10271-0332. No personal checks shall be accepted. The payment and all correspondence related to this Assurance must reference "AOD # 13-491."
15. This Assurance does not in any way impact, affect, impair, or terminate the Attorney General's still-ongoing and active Executive Law § 63(12) investigation, referred to in Paragraphs 4 of this Assurance, of potential violations of state and federal law by Respondents and/or any other Cookston New York Domino's Store.

Miscellaneous

16. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by the employer and the employer's counsel and the Attorney General's own factual investigation as set forth in Findings 2 through 6 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in his sole discretion.
17. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the employer in agreeing to this Assurance.
18. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by the Respondents. The employer represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The employer and its agents or employees agree not to take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis.
19. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.
20. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the Attorney General, may assign, delegate, or otherwise transfer any of its rights or

obligations under this Assurance without the prior written consent of the Attorney General.

21. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the Attorney General such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
22. To the extent not already provided under this Assurance, the employer agrees to, upon request by the Attorney General, provide all documentation and information necessary for the Attorney General to verify compliance with this Assurance.
23. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From Employer to the Attorney General:

New York State Office of the Attorney General, Andrew Elmore, Section Chief, Labor Bureau, 120 Broadway, 26th Floor, New York, New York, 10271-0332. Attn: Cookston investigation.

From the Attorney General to Employer:

Robin B. Kallor, Esq., of Rose Kallor, LLP, located at 750 Main Street, Suite 606, Hartford, Connecticut 06103.

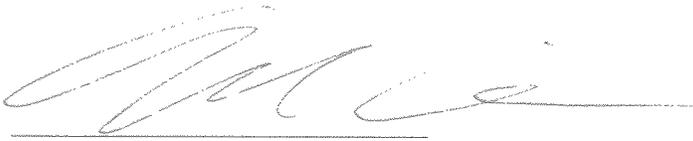
Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

24. Acceptance of this Assurance by the Attorney General shall not be deemed approval by the Attorney General of any of the practices or procedures referenced herein, and the employer agrees not to make any representation to the contrary.
25. Pursuant to Executive Law § 63(15), after an investigation commenced and concluded pursuant to Executive Law § 63(12), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the Attorney General.
26. If a court of competent jurisdiction determines that the employer has breached this Assurance, the employer agrees to pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.
27. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. The Attorney General is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of continuing its investigation and/or commencing a statutory proceeding against 3683 Washington Heights Pizza, LLC and Robert Cookston for violations of New York Labor Law § 215 and 29 U.S.C. § 215, provided however that the Attorney General's Executive Law § 63(12) investigation of the Cookston New York Domino's Stores, referred to in Paragraph 4, remains active and is not affected or in any way impaired by this Assurance of Discontinuance. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

28. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on December 12, 2013.

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 

Andrew Elmore
Labor Bureau
120 Broadway, 26th Floor
New York, New York 10271
Phone: (212) 416-8603
Fax: (212) 416-8694

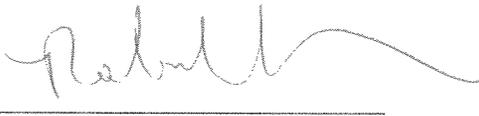
Dated: December 12, 2013

ROBERT COOKSTON

3683 WASHINGTON HEIGHTS PIZZA, LLC



ROBERT COOKSTON
Phone: 203 336 0660
Fax: 203 286 1431
Dated: December 12, 2013

By: 

ROBERT COOKSTON
President
Phone: 203 336 0660
Fax: 203 286 1431
Dated: December 12, 2013

APPENDIX A – EMPLOYEE LIST

1. Moises Miranda
2. Jose Rivera
3. Jose Sanchez
4. Jose Perez
5. Francisco Evangelizta
6. Carmelo Policao
7. Gonzalo Evangelista
8. Juan Cardenaz
9. Faustino Garcia
10. Mauro Sanchez
11. Salvador Navarrete
12. Jorge Huerta
13. Luis Lopez
14. Dionicio Navarrete
15. Alvino Hernandez
16. Rodolfo Ramirez
17. Bayron Solorzano
18. Noe Miranda
19. Fernando Verdis
20. Santiago Garcia
21. Enrique Hernandez
22. Antonio Campos
23. Jorge Verdis
24. Eleuterio Sosa
25. Miguel Escamilla