

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU

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)  
In the Matter of: )  
) ASSURANCE OF  
) DISCONTINUANCE  
The 65th Street Restaurant LLC )  
d/b/a Restaurant Daniel, and )  
The Dinex Group LLC )  
) PURSUANT TO  
) EXECUTIVE LAW 63(15)  
)  
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WHEREAS, pursuant to the provisions of Section 63(12) of the Executive Law, Andrew M. Cuomo, Attorney General of the State of New York, has made an inquiry into the policies, procedures, and practices of The 65th Street Restaurant LLC d/b/a Restaurant Daniel (“Restaurant Daniel”), and the Dinex Group LLC (“Dinex”) as owner of Restaurant Daniel, regarding allegations or issues of discrimination, retaliation and harassment against employees because of race, color, national origin and sex;

WHEREAS, the Office of the Attorney General (“OAG”) and Restaurant Daniel and Dinex share the common goal of assuring that all employees receive equal opportunities regardless of their race, color, national origin and sex;

WHEREAS, Restaurant Daniel and Dinex expressly deny any wrongdoing or liability in this matter and maintain that they have complied and will continue to comply with anti-discrimination laws;

WHEREAS, the parties herein desire to obviate further investigation or potential litigation, and it is expressly understood that, with respect to the OAG’s investigation, this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and potential litigation;

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, Restaurant Daniel, Dinex and the OAG hereby agree as follows:

I.  
DEFINITIONS

- 1.1 "Assurance" means this Assurance of Discontinuance.
- 1.2 "Restaurant Daniel" means the entity The 65th Street Restaurant LLC d/b/a Restaurant Daniel, all of its officers, employees, and representatives, and all individuals who act on its behalf.

1.3 “Dinex” means The Dinex Group LLC, all of its officers, employees, and representatives, and all individuals who act on its behalf.

1.4 “Front of the house positions” means those work positions or titles of employees at Restaurant Daniel described in Restaurant Daniel’s job descriptions to be provided to the OAG, within 45 days of the Effective Date of this Assurance, including but not limited to maitre d’, captain, assistant captain, lounge server, bartender, expediter, runner, busser, steward and any similar position or title in use during the term of this Assurance.

1.5 “Back of the house positions” means those work positions or titles of employees at Restaurant Daniel described in Restaurant Daniel’s job descriptions to be provided to the OAG, within 45 days of the Effective Date of this Assurance, which shall include chef, sous chef, cook, commis, prep cook, steward and any similar position or title in use during the term of this Assurance.

1.6 “Nonimmigrant” means a person not a citizen or national of the United States who seeks temporary entry to the U.S. for a specific purpose, defined in 8 U.S.C. § 1101 et seq., and includes any trainees or holders of J-1, H-1A, H-2B, O-1, or Q visas, or other nonimmigrant visas, who are directed by Restaurant Daniel and Dinex to perform work in connection with any of the positions and titles identified in ¶¶1.4 and 1.5 above.

1.7 “Visa status” means the particular visa a nonimmigrant holds, including but not limited to J-1, H-1A, H-2B, O-1, or Q visas.

1.8 “Employee” means any person performing work for and compensated by Restaurant Daniel and Dinex in any of the positions and titles identified in ¶¶1.4 and 1.5 above and includes nonimmigrants.

1.9 “Consent Decree” means the Consent Decree entered in Equal Employment Opportunity Commission v. The 65th Street Restaurant LLC d/b/a Restaurant Daniel, and the Dinex Group, Civ. No. \_\_\_\_\_, filed in the U.S. District Court, Southern District of New York.

1.10 “Effective Date” means the date this Assurance is executed by the parties hereto.

1.11 The use of the singular form of any word includes the plural and vice versa.

1.12 “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

## II. ATTORNEY GENERAL’S INVESTIGATION AND CONCLUSIONS

2.1 In 2006, the OAG received complaints from current and former employees of Restaurant Daniel and Dinex with respect to Restaurant Daniel from the Restaurant Opportunities Center of New York alleging that Restaurant Daniel discriminates, harasses and retaliates against employees because of race, color and national origin in promotions and other employment

practices. These allegations, if sustained, would constitute violations of Section 296(1) of the New York Executive Law, Section 8-107(1) of the New York City Administrative Code, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as well as Section 63(12) of the New York Executive Law by repeated and persistent violations of these statutes.

2.2 The OAG conducted an investigation into these complaints. The OAG interviewed complainants and witnesses on a confidential basis, reviewed pertinent policies, procedures and practices of Restaurant Daniel and Dinex with respect to Restaurant Daniel, and analyzed employment records of hiring, promotion, termination, discipline and compensation, as well as other relevant data, including information about the sex of employees. The OAG also reviewed the allegations in the complaint of Mamun et al. v. Boulud et al., Civ. No. 06-13749, filed in the U.S. District Court, Southern District of New York.

2.3 During the investigation, the parties have determined to resolve and settle the allegations set forth above on the terms contained in this Assurance.

THEREFORE, Restaurant Daniel and Dinex offer this Assurance of Discontinuance in settlement of the violations alleged from current and former employees of Restaurant Daniel and from the Restaurant Opportunities Center of New York, and the OAG accepts the specific assurances made herein pursuant to Executive Law § 63(15) and the provisions of this Assurance in lieu of further investigation and a potential civil action.

### III. COMPLIANCE WITH THE LAW

3.1 Restaurant Daniel and Dinex agree to comply fully with the obligations, terms, and conditions of Section 296(1) of the New York Executive Law, Section 8-107(1) of the New York City Administrative Code, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 22 C.F.R. §62.22.

### IV. ANTI-DISCRIMINATION POLICIES AND PROCEDURES

4.1 Restaurant Daniel and Dinex agree to comply fully with the terms and conditions of the Consent Decree entered in Equal Employment Opportunity Commission v. The 65th Street Restaurant LLC d/b/a Restaurant Daniel, and the Dinex Group, Civ. No. \_\_\_\_\_ (“Consent Decree”) filed in the U.S. District Court, Southern District of New York. The obligations and promises of Restaurant Daniel and Dinex in the Consent Decree are hereby incorporated into and made a part of this Assurance and made as promises and obligations to the OAG.

4.2 In addition to the foregoing obligations and promises, Restaurant Daniel and Dinex agree that within 45 days of the Effective Date of this Assurance, they will provide job descriptions for all front of the house and back of the house positions at Restaurant Daniel and incorporate a promotion policy for all positions in the Employee Handbook that is acceptable to the OAG. Restaurant Daniel and Dinex also agree that before hiring or promoting a nonimmigrant at Restaurant Daniel, they will provide an opportunity to apply and first priority to existing front of

the house and back of the house employees who are not nonimmigrants and who are qualified for the contemplated position or promotion. Restaurant Daniel and Dinex agree that they will not consider any person for a position or promotion in the front of the house or the back of the house who does not apply for that position, or for that promotion pursuant to the procedure set forth in the promotion policy of the Employee Handbook.

4.3 Within 10 days of the Effective Date, Restaurant Daniel and Dinex agree to post a remedial notice at Restaurant Daniel pursuant to this Assurance, attached hereto as Exhibit A, in a prominent place where employee notices are posted and to keep such notice posted for a period of seven years.

V.  
RECORD-KEEPING

5.1 In addition to any records required under the Consent Decree, Restaurant Daniel and Dinex agree to maintain the following for the duration of this Assurance with respect to Restaurant Daniel and operations of Dinex with respect to Restaurant Daniel:

- (a) Records sufficient to identify all persons applying for positions at Restaurant Daniel and the disposition of such applications, including but not limited to general applications that Dinex and/or Restaurant Daniel considers for hiring purposes at Restaurant Daniel. Restaurant Daniel and Dinex shall (a) keep (i) all resumes, applications and other records pertaining to persons applying for front of the house or back of the house positions who express an interest to be employed at Restaurant Daniel, including applications submitted through the Restaurant's website or delivered directly to Restaurant Daniel, or by other means, and the disposition thereof and reasons therefor; and (ii) records of telephone interviews or screenings of applicants to Restaurant Daniel, and the disposition thereof and reasons therefor; and (b) shall note, where such information is voluntarily disclosed by, or apparent from information provided by or observation of, the applicant, the applicant's race, sex, national origin and visa status, provided that it shall not be a violation of this Assurance for Restaurant Daniel and Dinex to make a reasonable determination of a person's race, national origin or sex where such determination is mistaken, or to fail to make such determination where there is no reasonable basis to support such a determination.
- (b) Records sufficient to identify all persons hired at Restaurant Daniel, their race, color, sex, national origin and visa status, position for which hired and the reason for their selection compared to others, substantially in the form of Exhibit D attached hereto. Restaurant Daniel shall require each of its employees to submit a passport quality color photograph of the employee with uniform lighting and quality sufficient to ascertain the employee's skin color and skin tone, and shall make all reasonable efforts to have the employee identify his or her sex, race and national origin by completing the Confidential Employee Data Record attached hereto as Exhibit B.

- (c) Records sufficient to identify all persons applying for promotion at Restaurant Daniel; their race, color, sex, national origin and visa status; the promotion position for which they applied; the disposition of such application or consideration and the reasons therefor; whether the person applied for the promotion at the encouragement or request of Restaurant Daniel or Dinex; and all persons promoted, positions to which promoted and the reasons for their selection compared to others.
- (d) Records sufficient to show compliance with all employment policies and procedures relating to hiring, promotions, assignment, compensation and Dinex's policy against discrimination set forth in Dinex's Employee Handbook, all obligations, promises and requirements set forth in the Consent Decree and this Assurance, and any other records required for monitoring purposes under the Consent Decree or this Assurance.

## VI. REPORTING

6.1 Restaurant Daniel and Dinex will provide the OAG copies of all monitoring reports and records required to be provided to the EEOC at the time provided under the Consent Decree.

6.2 In addition to the reporting described in the Consent Decree, Restaurant Daniel and Dinex agree to collect and report data semi-annually during the term of this Assurance as follows:

(a) Within 45 days of the Effective Date of this Assurance, Restaurant Daniel and Dinex shall provide the OAG a census, substantially in the form of Exhibit C, for all front of the house and back of the house positions as of the thirtieth day from the Effective Date, identifying by name, date of birth, race, sex, national origin, visa status, and prior employment history at Restaurant Daniel, each person working in the positions, and such persons for whom any of the foregoing characteristics is unknown to Restaurant Daniel and Dinex. Restaurant Daniel and Dinex shall thereafter provide the OAG with such census for each successive six-month period from the Effective Date, within 30 days following the end of each six-month period.

(b) Restaurant Daniel and Dinex shall provide the OAG with a log or logs within 30 days of the end of each successive six-month period from the Effective Date, substantially in the form of Exhibit D attached hereto, showing the following information for the period:

(i) all positions open or filled at Restaurant Daniel by hiring, promotion or transfer during the period; description of how applicants for each position were located with supporting evidence thereof (including, for example, copies of advertisements seeking applicants, names of persons providing referrals, etc.);

(ii) the name, race, sex, national origin and visa status of each person applying to Restaurant Daniel for each front of the house or back of the house position currently existing or created during the period; each employee hired; the position for which hired; and the reason for that person's selection compared to others;

(iii) the name, race, sex, national origin and visa status of each person applying to Restaurant Daniel for each position filled by promotion; each employee promoted; the position to which promoted; and the reason for that person's selection compared to others;

(iv) the name, race, sex, national origin and visa status of each person applying for a position at Restaurant Daniel filled by transfer of an employee; each employee transferred into and out of Restaurant Daniel; the position filled by transfer; and the reason for that person's selection compared to others;

(v) the name, race, sex, national origin and visa status of each person demoted at Restaurant Daniel; the position to which demoted; and the reason for that person's demotion;

(vi) the name, race, sex, national origin and visa status of each person discharged or separated from employment at Restaurant Daniel and the reasons therefor;

(vii) With respect to resumes and applications of applicants who express an interest to Dinex to be employed at Restaurant Daniel, or who submit a resume or application directly to Restaurant Daniel, and are not selected for further consideration, Restaurant Daniel and Dinex shall provide the name, race, sex, national origin and visa status of such applicants where such information is disclosed by, or apparent from information provided by or observation of, the applicant, provided that it shall not be a violation of this Assurance for Restaurant Daniel and Dinex to make a reasonable determination of a person's race, national origin or sex where such determination is mistaken, or to fail to make such determination where there is no reasonable basis to support such a determination.

(viii) With respect to resumes and applications of applicants who are interviewed, whether by telephone or in person, by Restaurant Daniel or Dinex for employment at Restaurant Daniel, Restaurant Daniel and Dinex shall provide the name, race, sex, national origin and visa status of such applicants where such information is disclosed by, or apparent from information provided by or observation of, the applicant, provided that it shall not be a violation of this Assurance for Restaurant Daniel and Dinex to make a reasonable determination of a person's race, national origin or sex where such determination is mistaken, or to fail to make such determination where there is no reasonable basis to support such a determination.

(c) Restaurant Daniel and Dinex shall make available for inspection and copying any records or documents requested by the OAG upon reasonable notice pertaining to Restaurant Daniel or to Dinex with respect to Restaurant Daniel, including but not limited to personnel files, resumes, job applications and/or evaluations, and/or provide employees for interviews.

6.3 Upon request by the OAG, Restaurant Daniel and Dinex shall also supply copies of payroll records with regard to employees.

6.4 Within 21 days after receiving a written request from the OAG, Restaurant Daniel and Dinex shall provide to the OAG any documents or data they are required to maintain or provide under the terms of this Assurance and/or the Consent Decree, and any documents or data the OAG believes relate to compliance with this Assurance and/or the Consent Decree. This Assurance does not in any way impair or affect the right of the OAG to obtain documents from Restaurant Daniel or Dinex pursuant to subpoena.

## VII.

### PAYMENT OF INVESTIGATION AND MONITORING COSTS

7.1 Restaurant Daniel and Dinex agree to pay the sum of \$25,000 to cover a portion of the costs of the OAG's investigation and monitoring.

7.2 Payment shall be made within 30 days of the Effective Date in the form of a certified or bank check made out to the New York State Department of Law and forwarded to the Office of Attorney General, Civil Rights Bureau, 120 Broadway, New York, New York 10271, Attention: Dianne E. Dixon, Bureau Chief, Civil Rights Bureau.

## VIII.

### JURISDICTION AND OTHER PROVISIONS

8.1 The reporting requirements set forth in section VI of this Assurance will expire four years after the Effective Date, except that the OAG may, in its sole discretion, extend the reporting period upon a good-faith determination that Restaurant Daniel and/or Dinex have not complied with this Assurance, which non-compliance the OAG will discuss and attempt to resolve with Restaurant Daniel and/or Dinex before making such determination. However, the record keeping requirements set forth in section V will remain in effect for a period of seven years after the Effective Date.

8.2 The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Assurance to effectuate its terms.

8.3 The parties may seek to enforce this Assurance through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Assurance. However, in the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention. Pursuant to New York Executive Law §63(15), evidence of a violation of this Assurance will constitute prima facie proof of a violation of the applicable statutes in any civil action or proceeding hereafter commenced by the OAG.

8.4 The failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.

8.5 If any provisions, terms, or clauses of this Assurance are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.

8.6 This Assurance constitutes the entire agreement between Restaurant Daniel, Dinex and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable, except for the non-disclosure agreement among Restaurant Daniel, Dinex and the OAG entered into during the OAG's investigation, the terms of which shall continue as applicable during the term of this Assurance.

8.7 Nothing in this Assurance is intended to, nor shall, limit the OAG's investigatory or compliance review powers otherwise provided by law or this Assurance.

8.8 Nothing in this Assurance is intended as, and shall not be construed as, an admission that Restaurant Daniel, Dinex or any of their officers, directors, agents, representatives, or employees have violated any federal, state, or local law, ordinance, or regulation, or committed any other wrongful or unlawful act whatsoever.

8.9 This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

8.10 This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.

8.11 Restaurant Daniel and Dinex shall not retaliate, intimidate, threaten, coerce, or discriminate against any person who has filed a complaint, assisted, cooperated, or participated in any manner in the investigation of the matter addressed in this Assurance.

8.12 All communications and notices regarding this Assurance shall be sent by first class mail and facsimile, if twenty-five (25) pages or less in length, to:

OAG

Dianne E. Dixon, Esq.  
Bureau Chief  
Office of the NYS Attorney General  
Civil Rights Bureau  
120 Broadway, 3rd Floor  
New York, New York 10271

Restaurant Daniel and Dinex

Daniel S. Moretti, Esq.  
Landman Corsi Ballaine & Ford, P.C.  
120 Broadway, 27th Floor  
New York, New York 10271  
Tel. (212) 238-4800  
Fax (212) 238-4848

Tel. (212) 416-8250

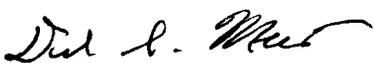
Fax (212) 416-8074

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York

July 23, 2007

THE 65th STREET RESTAURANT LLC  
d/b/a RESTAURANT DANIEL, and  
THE DINEX GROUP LLC

By: 

Daniel S. Moretti  
Landman Corsi Ballaine & Ford, P.C.  
120 Broadway, 27th Floor  
New York, New York 10271  
Tel. (212) 238-4800  
Fax (212) 238-4848  
Attorneys for The 65th Street Restaurant LLC  
d/b/a Restaurant Daniel, and The Dinex Group LLC

CONSENTED TO:

Dated: New York, New York

July 25, 2007

ANDREW M. CUOMO  
Attorney General of the State of New York

By: 

Dianne E. Dixon  
Bureau Chief  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074

EXHIBIT A

**NOTICE TO ALL EMPLOYEES OF RESTAURANT DANIEL**

This notice is posted and provided as part of a Consent Decree between the U.S. Equal Employment Opportunity Commission ("EEOC") and Restaurant Daniel, in *EEOC v. Restaurant Daniel and The Dinex Group*, Civil Action No. \_\_\_, and pursuant to an Assurance of Discontinuance entered into between the Office of the New York State Attorney General and Restaurant Daniel and Dinex, as the result of an investigation by the Attorney General and the EEOC of allegations of discrimination against employees because of race, color, national origin and sex.

Federal and State law prohibits employers from discriminating against applicants and employees based on their race, color, national origin, sex, age, disability status and religion. Restaurant Daniel and Dinex have agreed to comply with all laws prohibiting discrimination in the workplace. They will not take any retaliatory action against any employee who asserts his or her rights under, or complains of violations of, these laws by filing a complaint with the EEOC or the Office of the Attorney General.

Should you have any complaint of discrimination, you may contact the

Equal Employment Opportunity Commission  
New York District Office  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004  
Telephone: 1-800-669-4000  
[www.eeoc.gov](http://www.eeoc.gov)

and

Office of the New York State Attorney General  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
Telephone: (212) 416-8250 or (800) 771-7755  
Fax: (212) 416-8074  
[www.oag.state.ny.us](http://www.oag.state.ny.us)

**THIS IS AN OFFICIAL NOTICE**

This is an Official Notice and must remain posted for seven years from the date of posting and may not be altered, defaced or covered by any other material, until June \_\_, 2014.

Signed:

\_\_\_\_\_  
General Manager, Restaurant Daniel  
July \_\_, 2007

EXHIBIT B

CONFIDENTIAL EMPLOYEE DATA RECORD

Pursuant to applicable laws and other legal obligations, Restaurant Daniel and Dinex must collect, maintain and report certain information regarding their workforce. The purpose of this Data Record is to comply with those legal obligations. This information will be kept confidential and used only in accordance with applicable laws and regulations for civil rights enforcement.

Please voluntarily provide the following information about your race and ethnicity. Failure to provide the information will not adversely affect your employment or any employment decision.

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Please check the group(s) in which you would include yourself (check all boxes that apply):

Male       Female

HISPANIC or LATINO

(A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race)

WHITE (Not Hispanic or Latino)

(A person having origins in any of the original peoples of Europe, Russia, the Middle East or North Africa)

BLACK or AFRICAN AMERICAN (Not Hispanic or Latino)

(A person having origins in any of the black racial groups of Africa)

NATIVE HAWAIIAN or OTHER PACIFIC ISLANDER (Not Hispanic or Latino)

(A person having origins in any of the peoples of Hawaii, Guam, Samoa or other Pacific Islands)

AMERICAN INDIAN or ALASKA NATIVE (Not Hispanic or Latino)

(A person having origins in any of the original peoples of North and South America, including Central America, and who maintains tribal affiliation or community attachment)

ASIAN (Not Hispanic or Latino)

(A person having origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent, including, for example, Bangladesh, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam)

TWO or MORE RACES

Please specify \_\_\_\_\_

\_\_\_\_\_

NATIONAL ORIGIN

Please specify the country of your ancestry or origin: \_\_\_\_\_



EXHIBIT D

| <b>Position<br/>[How<br/>Applicants<br/>Found]</b> | <b>Last<br/>Name</b> | <b>First<br/>Name</b> | <b>DOB</b> | <b>Race</b> | <b>National<br/>Origin</b> | <b>Sex</b> | <b>Visa<br/>Status</b> | <b>Daniel<br/>Employee</b> | <b>Date<br/>Position<br/>Open</b> | <b>Date<br/>Interviewed</b> | <b>Determination<br/>Or Action</b> | <b>Reasons<br/>Compared<br/>To Others</b> |
|--|----------------------|-----------------------|------------|-------------|----------------------------|------------|------------------------|----------------------------|-----------------------------------|-----------------------------|------------------------------------|---|
|  |                      |                       |            |             |                            |            |                        |                            |                                   |                             |                                    |   |
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