

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the
State of New York,

and

THE STATE OF NEW YORK and THE CITY
OF NEW YORK, ex rel. SEIU LOCAL 32BJ,

Plaintiffs,

v.

BROOKLYN WAREHOUSE 180 LLC and
MICA GABE BROOKLYN LLC,

Defendants.

Index No. 100111/2018

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the People of the State of New York (the “State”) (ii) the City of New York (the “City”); (iii) Defendants Brooklyn Warehouse 180 LLC (“Brooklyn Warehouse”) and Mica Gabe Brooklyn LLC (“Mica Gabe,” and together with Brooklyn Warehouse, the “Defendants”); and (iv) relator Local 32BJ, Service Employees International Union, AFL-CIO (the “Relator” or “SEIU Local 32BJ”), through their authorized representatives. All of the above-named persons and entities are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about January 23, 2018, Relator filed a *qui tam* complaint captioned *State of New York ex rel. SEIU Local 32BJ v. Brooklyn Warehouse 180 LLC, et al.*, in the

Supreme Court of the State of New York, New York County, Index No. 100111/2018 (the “Action”); and

WHEREAS, the Attorney General of the State of New York (the “Attorney General”) thereafter commenced an investigation in connection with the allegations in the Relator’s *qui tam* complaint; and

WHEREAS, the Comptroller of the City of New York (the “Comptroller”) commenced an investigation into Defendants’ alleged failure to pay the applicable prevailing wages and supplemental benefits to building service employees employed at the 180 Nassau Street Property (defined hereinafter at Paragraph 1) in violation of Section 421-a of the New York Real Property Tax Law and the Rules of the City of New York (28 R.C.N.Y. §§ 50-01 *et seq.*); and

WHEREAS, as a result of the Attorney General’s investigation, the State and City contend that they have civil claims against the Defendants under the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* (“NYFCA”) and Executive Law § 63(12); and

WHEREAS, the Parties have agreed to enter into a full and final settlement of the Action and contemporaneously enter into a separate Stipulation of Settlement with the Comptroller (the “Stipulation of Settlement”); and

WHEREAS, the Defendants have agreed to this Agreement in settlement of the claims asserted in the Action and to avoid the time, expense, uncertainty, inconvenience, and distraction of protracted litigation of the claims, the Parties have determined and hereby agree that settlement is in their best interests, and the Attorney General and the Corporation Counsel of the City of New York have agreed to accept the terms of the Agreement; and

WHEREAS, Relator claims entitlement under New York State Finance Law § 190(6) to a share of the proceeds of this Agreement;

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle this Action pursuant to the Terms and Conditions below:

BACKGROUND AND COVERED CONDUCT

1. Defendants Brooklyn Warehouse 180 LLC and Mica Gabe Brooklyn LLC are the current and former owner, respectively, of a 10-story luxury apartment building at 180 Nassau Street in Downtown Brooklyn (the “180 Nassau Street Property”). The 180 Nassau Street Property includes 103 luxury rental units with a twenty-four hour concierge-attended lobby as well as a superintendent, doormen, porters, and other building service employees who service and maintain the property.

2. Since 2014, the Defendants have enjoyed the benefits of a Section 421-a partial tax exemption for the 180 Nassau Street Property that substantially reduces the property taxes Defendants are required to pay, in exchange for, among other things, Defendants’ agreement to pay building service employees employed at the property the applicable prevailing wages.

3. As described below, in 2014, the New York City Department of Housing Preservation and Development (“HPD”) issued to Defendant Mica Gabe certificates of eligibility for a Section 421-a partial tax exemption for the 180 Nassau Street Property based on, among other things, Mica Gabe attesting that building service employees employed at the property would be paid the applicable prevailing wages. From approximately August 2014 to approximately March 2016, Defendants failed to pay applicable prevailing wages to building service employees employed at the 180 Nassau Street Property.

The Section 421-a Program and the Prevailing Wage Requirements

4. Pursuant to New York Real Property Tax Law (“R.P.T.L.”) § 421-a (“Section 421-a” or the “Act”), and upon application, certain newly-constructed multiple dwellings in the City of New York are eligible for a partial tax exemption from local property taxes. *See* R.P.T.L. § 421-a(2)(a)(i). In 2007, Section 421-a was amended to impose the prevailing wage requirements at R.P.T.L § 421-a(8).

5. During the relevant time period, R.P.T.L § 421-a(8) provided that no partial tax exemption is available for projects that commenced construction after December 27, 2007, “except where the applicant agrees that all building service employees employed at the building, whether employed directly by the applicant or its successors, or through a property management company or a contractor, shall receive the applicable prevailing wage for the duration of the building’s tax exemption.” R.P.T.L. § 421-a(8)(b) (eff. Dec. 28, 2010 to June 14, 2015). The 421-a statute defined “building service employees” to include, among others, superintendents, guards, doormen, building cleaners, and porters, if such workers are regularly scheduled to work at least eight hours per week in the building, and defined “prevailing wage” as “the wage determined by the fiscal officer to be prevailing for the various classes of building service employees in the locality pursuant to section two hundred thirty of the labor law.” *Id.* § 421-a(8)(a).

6. With respect to building service work at residential buildings in New York City, Labor Law § 230 defines the New York City Comptroller (“Comptroller”) as the “fiscal officer,” and defines “wage” to include both a “basic hourly cash rate of pay” and “supplements,” which are defined as fringe benefits such as health or pension benefits, vacation and holiday pay and other bona fide fringe benefits.

7. By its terms, R.P.T.L § 421-a(8) does not apply to projects containing fewer than 50 dwelling units, or where HPD certifies “that at initial occupancy at least fifty percent of the dwelling units are affordable to individuals or families with a gross household income at or below one hundred twenty-five percent of the area median income and that any such units which are located in rental buildings will be subject to restrictions to insure that they will remain affordable for the entire period during which they receive benefits under this section.”

8. The Comptroller determines and publishes on his website a “Labor Law § 230 Prevailing Wage Schedule for Building Service Employees,” (“Comptroller’s Schedule”), on an annual basis. The Comptroller’s Schedule is based in part on a collective bargaining Agreement between SEIU Local 32BJ and the Realty Advisory Board on Labor Relations, Inc.

9. By way of example, the 2014-2015 Comptroller’s Schedule for concierges, doormen, and porters/cleaners in residential buildings, for the periods listed and subject to adjustments summarized in the next paragraph, lists the following as the applicable wage rate per hour (corresponding to the “basic hourly cash rate of pay” component of the Labor Law § 230 “prevailing wage”):

July 1, 2014 through April 20, 2015 - \$21.98 per hour;

April 21, 2015 through June 30, 2015 - \$22.51 per hour.

10. The 2014-2015 Comptroller’s Schedule provides that newly hired employees may be paid a starting rate of 80% of the hourly rates stated above, and upon completion of 30 months of employment, shall be paid at least the full wage rate.

11. The 2014-2015 Comptroller’s Schedule requires ten annual specific paid holidays (including, if a holiday is worked, overtime at time and one half the regular rate in addition to holiday pay); requires vacation and sick leave pay at specified levels; and requires overtime at

time and one half the regular rate after an eight-hour day, as well as after 40 hours in a work week.

12. HPD is the local agency responsible for administering eligibility for tax exemptions under Section 421-a, and it has promulgated eligibility rules for such tax exemptions. *See* Chapter 6 of Title 28 of the Rules of the City of New York (“R.C.N.Y.”). Applicants for an exemption pursuant to Section 421-a are required to apply for a Preliminary Certificate of Eligibility (“PCE”) and subsequently a Final Certificate of Eligibility (“FCE”). *See* 28 R.C.N.Y. § 6-05.

13. Pursuant to HPD’s regulations, applications for a Section 421-a partial tax exemption where construction commenced on or after December 28, 2007, must include “an affidavit from the owner certifying that either (A) all building service employees employed or to be employed at the building shall receive the applicable prevailing wage for the duration of such building’s tax exemption pursuant to the Act, or (B) such project contains less than fifty dwelling units, or (C) at initial occupancy, at least fifty percent (50%) of the dwelling units in the multiple dwelling will be affordable to individuals or families with a gross household income at or below one hundred twenty-five percent (125%) of the area median income and that any such rental units will remain affordable for the entire period during which they receive benefits pursuant to this Act.” 28 R.C.N.Y. § 6-05(d)(1)(ix).

Defendants’ Application for a 421-a Partial Tax Exemption and Failure to Pay Prevailing Wages to Building Service Employees

14. On or about February 14, 2012, Mica Gabe took title to the 180 Nassau Street Property.

15. In or about 2012, Mica Gabe hired a law firm (“421-a Counsel”) to assist in applying to HPD for a Section 421-a partial tax exemption for the 180 Nassau Street Property.

16. In or about September 2013, Mica Gabe secured financing for the development and construction of the 180 Nassau Street Property. In connection with that financing, Mica Gabe's 421-a Counsel issued an opinion letter opining that the project would be eligible for a Section 421-a partial tax exemption. In the opinion letter, Mica Gabe's 421-a Counsel stated that the project would be subject to Section 421-a's prevailing wage requirement.

17. On July 24, 2014, Mica Gabe submitted an application to HPD for a PCE for a Section 421-a partial tax exemption for the 180 Nassau Street Property, consisting of 103 dwelling units (the "PCE Application").

18. Included in the PCE Application was an Owner's Affidavit, signed by Mica Gabe's authorized signatory on July 21, 2014, representing, among other things, that "all building service employees employed or to be employed at the multiple dwelling shall receive the applicable prevailing wage for the duration of such multiple dwelling's 421-a Partial Tax Exemption."

19. In or around August 1, 2014, tenants began moving into the 180 Nassau Street Property, and Mica Gabe began to employ doormen, porters, a superintendent, and other building service employees to provide care and maintenance for the building.

20. Beginning in or around August 1, 2014, Mica Gabe paid newly-hired doormen a wage of \$12 per hour, rather than the applicable prevailing wage of \$17.58 per hour. Mica Gabe paid the newly-hired superintendent \$17.50 per hour, rather than the applicable prevailing wage of \$24.26 per hour. In addition, Mica Gabe did not provide building service employees with applicable supplemental benefits.

21. On October 31, 2014, in reliance on the PCE Application, including Mica Gabe's Owner's Affidavit, HPD issued a PCE for a Section 421-a partial tax exemption for the 180

Nassau Street Property. The PCE granted a construction period partial tax exemption for the project and indicated that upon issuance of the FCE, the project would be entitled to an exemption from property taxes for fifteen years.

22. In or around November 2014, Mica Gabe filed the PCE with the New York City Department of Finance and began receiving Section 421-a tax benefits for the 180 Nassau Street Property.

23. On December 9, 2014, Mica Gabe submitted an application to HPD for a FCE for a Section 421-a partial tax exemption for the 180 Nassau Street Property (the “Final Application”). The Final Application, signed by Mica Gabe’s authorized signatory, included an affidavit attesting that such signatory “has read and agrees to abide by the Regulations for 421-a partial tax exemption, and he/she understands that the City of New York will rely on the statements contained herein in acting upon this application.”

24. On December 18, 2014, Mica Gabe transferred ownership of the 180 Nassau Street Property to Brooklyn Warehouse. Brooklyn Warehouse failed to pay building service employees employed at the 180 Nassau Street Property the applicable prevailing wages and provide applicable supplemental benefits until March 2016.

25. On February 4, 2015, in reliance on Mica Gabe’s Final Application, HPD issued a FCE for a Section 421-a partial tax exemption for the 180 Nassau Street Property. The FCE granted a partial tax exemption for the 180 Nassau Street Property for a period of fifteen years.

26. Promptly after having been alerted to its non-compliance as aforesaid, in or around March 2016, Brooklyn Warehouse began to pay the applicable prevailing wages and provide applicable supplemental benefits to building service employees employed at the 180 Nassau Street Property and paid into its counsel’s escrow account funds to pay prevailing wages

for the building service employees employed at the 180 Nassau Street Property for the prior period.

27. The State and City contend that defendant Mica Gabe actually knew, recklessly disregarded, or was deliberately ignorant that the attestation in the Owner's Affidavit that building service employees employed at the 180 Nassau Street Property would be paid the applicable prevailing wages was false when made. The State and City contend that defendant Mica Gabe actually knew, recklessly disregarded, or was deliberately ignorant that the attestation in the Final Application that Mica Gabe has read and agrees to abide by the Regulations for 421-a partial tax exemption was false when made.

28. The State and City contend that, as a result of Mica Gabe's submission of the false Owner's Affidavit and the false Final Application, Mica Gabe fraudulently induced HPD to grant a Section 421-a partial tax exemption for the 180 Nassau Street Property, in violation of the NYFCA.

29. The conduct described in the foregoing Paragraphs 1-25, is hereinafter referred to as the "Covered Conduct."

30. While neither admitting nor denying the State and City's contentions in the foregoing Paragraphs 27 and 28, the Defendants admit to a violation of the NYFCA. The Defendants admit and acknowledge that the Covered Conduct constitutes a first willful violation of the prevailing wage requirement at the 180 Nassau Street Property and shall be treated as such for purposes of 28 R.C.N.Y. § 50-06 relating to R.P.T.L. § 421-a tax exemption benefit revocation. If, subsequent to the sale of the 180 Nassau Street Property by the Defendants to a bona fide third-party purchaser, the State or the City determines that conduct amounting to a second willful violation of the prevailing wage requirement at the 180 Nassau Street Property has

occurred, any subsequent purchaser(s) will be given an opportunity, within the Comment Period, to propose a cure for such conduct before any Determination Notice is delivered, in accordance with 28 R.C.N.Y. § 39-02.

TERMS AND CONDITIONS

Settlement Amount

31. The Defendants, jointly and severally, agree to pay the sum of two million, nine hundred and eight thousand, five hundred and three dollars (\$2,908,503) (the “Settlement Amount”) to resolve the Action, the Attorney General’s and the City’s investigation, and the Comptroller’s investigation. The Settlement Amount represents unpaid wages and interest to building service employees employed at the 180 Nassau Street Property; damages recovered by the State and the City for alleged violations of the NYFCA; and the Relator’s share, *i.e.*, the share to which the Relator is entitled under New York State Finance Law § 190(6).

32. The Settlement Amount is divided into three portions: (i) \$414,565.54 paid to the Comptroller (the “Comptroller’s Share”) pursuant to the Stipulation of Settlement; (ii) \$2,045,028.72 paid to the State and City (the “State and City’s Share”); and (iii) \$448,908.74 paid to the Relator (the “Relator’s Share”), the share to which the Relator is entitled under New York State Finance Law § 190(6).

33. The Defendants, jointly and severally, agree to pay or cause to be paid the Comptroller’s Share pursuant to the Stipulation of Settlement entered into contemporaneously with the Comptroller.

34. The Defendants, jointly and severally, agree to pay or cause to be paid the State and City’s Share as follows:

- a. Within seven (7) days of the Effective Date of this Agreement, the Defendants shall pay \$2,045,028.72 by wire transfer pursuant to written instructions provided by the Attorney General.

35. The Defendants, jointly and severally, agree to pay or cause to be paid the Relator's Share as follows:

- a. Within seven (7) days of the Effective Date of this Agreement, the Defendants shall pay \$448,908.74 by wire transfer to an attorney trust account, pursuant to written instructions provided by Relator's counsel.
- b. The Defendants have separately agreed to pay Relator \$49,500, representing attorney's fees and costs, by wire transfer to an attorney trust account within seven (7) days of the Effective Date of this Agreement, pursuant to written instructions provided by Relator's counsel.

36. The State and the Defendants agree that for purposes of Internal Revenue Code ("I.R.C.") § 162(f):

- a. Of the Settlement Amount, \$2,050,344.60 constitutes restitution for damage or harm which was or may be caused by the violation of Section 421-a of the R.P.T.L. and Chapter 6 of Title 28 of the R.C.N.Y., within the meaning of I.R.C. § 162(f)(2).

37. The Defendants agree that they will not claim, assert, or apply for a tax deduction or tax credit on any New York State or New York City tax return, for any portion of the amounts paid to the Comptroller, the State, the City, and/or the Relator pursuant to this Agreement. If any such amount is deducted for federal tax purposes it will be added back to income under "other additions" on any New York State or New York City tax return.

38. In consideration of the obligations of the Defendants as set forth in this Agreement, and conditioned upon the Defendants' payments to the Comptroller, State, City, and Relator pursuant to paragraphs 33, 34, and 35, the State and Relator, within fourteen (14) days of said payments, shall file, pursuant to New York Civil Practice Law and Rule ("CPLR") 3217(a), a Notice of Discontinuance of the Action with prejudice. A copy of the proposed Notice of Discontinuance to be signed by counsel is annexed hereto as Exhibit A.

Non-Monetary Relief

39. Brooklyn Warehouse agrees and acknowledges that for the duration of any tax exemption provided by R.P.T.L. § 421-a, payment of the required applicable prevailing wages and supplemental benefits to building service employees employed at the 180 Nassau Street Property is required whether such employees are employed directly by Brooklyn Warehouse or its successors or assigns, through a property management company, through a contractor or subcontractor, or by other third party. Brooklyn Warehouse will comply with this and all other requirements of R.P.T.L. § 421-a and 28 R.C.N.Y. 6-01 *et seq.*, for the entire time period for which it receives a Section 421-a partial tax exemption.

40. In the event that any sale or other transfer of the 180 Nassau Street Property is proposed or considered, Brooklyn Warehouse will notify any potential buyer or successor of the prevailing wage requirement at an early stage of discussion or negotiation, will send written confirmation of any such notification to the Attorney General within ten (10) business days, and will include a provision recognizing the existence of the requirement in any term sheet, proposal for sale or transfer, and document effecting sale or transfer. Such document shall also require the purchaser, transferee or other successor to assume the non-monetary obligations of this Agreement at paragraphs 39, 40 and 41, from and after the date of their ownership.

41. Brooklyn Warehouse shall provide the Attorney General with a certification in writing and signed by Brooklyn Warehouse affirming its compliance with the prevailing wage requirements of Section 421-a and the requirements set forth in paragraphs 39 and 40 of this Agreement, to be submitted to the Attorney General and the City thirty (30) days after the effective date of this Agreement. Such certificate of compliance will include a report of the prevailing wages and supplemental benefits paid to each building service employee over the previous 1-year period. Thereafter, a certification of compliance, and accompanying prevailing wage report, shall be submitted to the Attorney General and the City on an annual basis for the following two (2) years, commencing one year after the effective date of this Agreement. In any case where the circumstances warrant, the Attorney General or the City may require Brooklyn Warehouse to file an interim certification of compliance upon thirty (30) days' notice. In the event of any sale or other transfer of the 180 Nassau Street Property, Brooklyn Warehouse will have no further obligations relating to this Agreement upon providing written confirmation to the Attorney General and the City of the sale and that it has met its obligations pursuant to this paragraph; provided, however, that Brooklyn Warehouse must provide the Attorney General and the City with thirty (30) days advance written notification of any scheduled sale or transfer, including the terms that show that the purchaser, transferee, or other successor has agreed to comply with the prevailing wage requirements of Section 421-a.

Releases

42. Subject to the exceptions in the next Paragraph, in consideration of the obligations of the Defendants set forth in this Agreement, and conditioned upon the full payment by the Defendants of the Settlement Amount, and subject to Paragraph 51 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this

Agreement or any payment under the Agreement, whichever is later), the State and the City release Defendants and any of their respective owners and/or members from any civil or administrative monetary claim the State or City have or may have for the Covered Conduct under the NYFCA, the New York Executive Law, or any other law. Moreover, the City and State hereby agree not to revoke, suspend or otherwise modify any tax benefits previously received by the Defendants pursuant to § 421-a of the R.P.T.L., based solely upon the Covered Conduct.

43. Notwithstanding any term of this Agreement, the State and the City specifically do not release any person or entity from any of the following liabilities:

- a. any civil or administrative liability arising under any state or municipal tax law, except as provided in Paragraph 42;
- b. any criminal liability (the Attorney General represents that there are no criminal proceedings, which it is presently contemplating or pursuing against either the Defendants, their owners, their members, or their employees, based on the Covered Conduct);
- c. any liability to the State (or its agencies) or City (or its agencies) for any conduct other than the Covered Conduct;
- d. any liability based upon obligations created by this Agreement; and
- e. any civil or administrative liability of individuals, except as provided for herein.

44. Nothing herein affects the obligations or duties of the Defendants prescribed by the Stipulation of Settlement, nor the rights of the Comptroller under the Stipulation of Settlement.

45. In consideration of the obligations of the Defendants in this Agreement, conditioned upon the full payment by the Defendants of the Settlement Amount, the Relator, for itself, and for each of its officers, directors, employees, attorneys, and agents, fully and finally releases, waives, and forever discharges the Defendants and any of their respective owners and/or members from any rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature, whether known or unknown, that the Relator has asserted, could have asserted, or may assert in the future for itself or on behalf of the State or any local governments within the State for the Covered Conduct, including under the NYFCA.

46. The Defendants and any current affiliated entity and any of their respective owners, officers, directors, employees, managers, members, partners, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally waive, and forever release the State and City, and their agencies, officers, employees, attorneys, and agents, from any rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature (including for attorney's fees, costs, and expenses of every kind and however denominated), whether known or unknown, that the Defendants have asserted, could have asserted, or may assert in the future against the State or City, and their agencies, officers, employees, attorneys, and agents, related to the Covered Conduct and/or the State's and the City's investigation and prosecution thereof.

47. The Defendants and any current affiliated entity and any of their respective owners, officers, directors, employees, managers, members, partners, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally release, waive, and forever discharge the Relator, and each of its officers, directors, employees,

attorneys, and agents, from any rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature (including for attorney's fees, costs, and expenses of every kind and however denominated), whether known or unknown, that the Defendants have asserted, could have asserted, or may assert in the future against the Relator, and each of its members, officers, directors, employees, attorneys, and agents, for the Covered Conduct and the Relator's and the State and the City's investigations and civil prosecution thereof.

48. The Relator, for itself individually, and for Relator's owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State and City, their agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against the State or City, arising out of the filing of claims against the Defendants or from any other claim for a share of the settlement proceeds from the Defendants. Relator accepts the payment described in Paragraph 35 in full settlement of any claims Relator may have against the State or City for any claims against the Defendants. This Agreement does not resolve or in any manner affect any claims the State or City has or may have against Relator arising under State or City tax laws, or any claims arising under this Agreement.

49. The Relator, and each of its officers, directors, employees, and agents, hereby agrees and confirms that this Agreement is fair, adequate, and reasonable with respect to all Parties under all the circumstances, pursuant to New York State Finance Law § 190(5)(b)(ii). The Relator agrees not to object to the settlement of the Action.

50. The State and City have agreed to the terms of this Agreement based on, among other things, the representations made to the Attorney General by Defendants and their counsel. These representations include, but are not limited to, representations that building service employees employed by Brooklyn Warehouse since April 2016 have been receiving the applicable prevailing wages and supplemental benefits. To the extent that any material representations are later found to be materially inaccurate or misleading, this Agreement is voidable by the Attorney General in its sole discretion. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Defendants in agreeing to this Agreement. The Parties acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

Bankruptcy and Non-Payment

51. If within ninety-one (91) days after the Effective Date of this Agreement or of the date of any payment made by the Defendants under this Agreement, any of the Defendants or a third party commences against any or all of the Defendants any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of its or their debts, or seeking to adjudicate any of the Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any of the Defendants or for all or any substantial part of its or their assets, each of the Defendants agrees as follows:

- a. The Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and the Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i)

their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) they were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to the Defendants.

- b. If any of the Defendants' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State or City, at their sole option, may rescind the releases in this Agreement insofar as they affect the State or City and bring any civil and/or administrative claim, action, or proceeding against the Defendants and their parents, subsidiaries, and affiliates, as well as the current and former officers, directors, and employees of each of them, for the claims that would otherwise be covered by the releases provided above, and the Defendants agree that (i) any such claims, actions, or proceedings brought by the State or City are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and the Defendants shall not argue or otherwise contend that the State's or the City's claims, actions, or proceedings are subject to an automatic stay; (ii) they shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims,

actions, or proceedings that are brought by the State or City within 60 calendar days of written notification to the Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the State or City has a valid claim against the Defendants in the amount of treble damages plus penalties under the NYFCA, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. The Defendants acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

52. In the event of the failure by the Defendants to make any or all payments of the Settlement Amount, including the Comptroller's Share, the State and City's Share, and the Relator's Share, when due according to Paragraphs 33, 34 and 35, the State will provide written notice of the non-payment to the Defendants. Such notice shall be given to the person and address designated in Paragraph 65 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. The Defendants shall have an opportunity to pay the unpaid balance within ten (10) calendar days from the effective date of the notice. If the Defendants fail to pay the overdue unpaid balance of its payment obligations under this Agreement within ten (10) calendar days from the effective date of the notice of non-payment ("Default"), the State or City,

in their sole discretion, may declare or do any or all of the following, or may exercise, without limitation, any remedies available under law, including:

- a. The State or City may declare the entire Settlement Amount, less any credits and payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in CPLR 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Pursue all available remedies to enforce this Agreement and remedy violations of this Agreement. In the event of a Default as described above, the Defendants agree not to contest any action to enforce this Agreement or any other collection action undertaken by the State or City pursuant to this Paragraph or pursuant to law, and the Defendants agree to pay the State or City, without limitation, all reasonable costs of collection and enforcement of this Agreement, including attorney's fees, expenses and court costs; and/or
- c. Rescind their agreement to this Agreement as to the Defendants and their parents, subsidiaries, and affiliates, as well as the current and former officers, directors, and employees of each of them, and prosecute this action and/or commence a new action against the Defendants and any of their parents, subsidiaries, and affiliates, as well as the current and former officers, directors, and employees of each of them, in this Court. In the event the State or City pursues any such action, the Defendants: (1) expressly agree not to plead, argue, or otherwise raise any defenses under

the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State or City after the written notification to the Defendants of Default, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses the Defendants may have to any civil or administrative action relating to the Covered Conduct.

53. In the event the State or City rescinds this Agreement pursuant to Paragraphs 52(b) or 52(c), any and all credits and payments made under this Agreement towards the Comptroller's Share, the State and City's Share, and the Relator's Share shall be credited towards any future judgment against the Defendants.

54. In the event of the failure by the Defendants to make any or all payments of the Relator's Share when due according to Paragraph 35, the Relator will provide written notice of the non-payment to the Defendants. Such notice shall be given to the person and address designated in Paragraph 65 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. The Defendants shall have an opportunity to pay the unpaid balance within ten (10) calendar days from the effective date of the notice. If the Defendants fail to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this Agreement within ten (10) calendar days from the effective date of the notice of non-payment ("Relator's Share Default"), the Relator, in its sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing

the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or

- b. Institute an action or actions against the Defendants in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. The Defendants further waive and will not assert any defenses and agree not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and the Defendants agree to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

Additional Terms

55. The Parties represent and warrant, through the signatures below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized.

56. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below and to legally bind the person or entity on whose behalf he or she is signing this Agreement.

57. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or taking positions inconsistent with this Agreement. Nothing in this paragraph affects Defendants' testimonial obligations or its right to take legal or

factual positions in defense of litigation or other legal proceedings to which the State is not a party.

58. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any Party that may be found to have been the drafter.

59. Except as provided in Paragraph 45 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

60. This Agreement constitutes the complete agreement between and among the Parties, and may not be amended, modified, or altered except by an instrument in writing signed on behalf of all the Parties to this Agreement. Other than the contemporaneously executed Stipulation of Settlement, this Agreement supersedes any and all prior agreement or negotiations of the Parties, whether oral or in writing, with respect to the Action.

61. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns, provided that no Party, other than the State or City, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Attorney General.

62. This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except that the Parties recognize and acknowledge that the workers identified in paragraph 19 of this Agreement are entitled to receive back wages in the amount of underpaid prevailing wages plus interest, which will be paid to them out of the Settlement Amount.

63. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid,

illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

64. Any failure by the State or City to insist upon the strict performance by the Defendants and/or the Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State or City, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the Relator and/or the Defendants. Any failure by the Relator to insist upon the strict performance by the Defendants of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Relator, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by the Defendants.

65. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State:

David E. Farber, Esq.
Taxpayer Protection Bureau
Office of the New York Attorney General
28 Liberty Street, 21st Floor
New York, NY 10005
(212) 416-6507
David.Farber@ag.ny.gov

If to the City:

Alan H. Kleinman, Esq.
Counsel
Affirmative Litigation Division
New York City Law Department
100 Church Street, 20th Floor
New York, NY 10007
(212) 356-2033
akleinma@law.nyc.gov

If to the Relator:

William L. Hurlock, Esq.
Mueller Law LLC
363 Bloomfield Ave., Suite 2-c
Montclair, NJ 07042
(973) 233-8290
William.Hurlock@muellerlaw.com

Katchen Locke, Esq.
SEIU Local 32BJ
25 West 18th Street
New York, NY, 10011-1991
(212) 539-2941
klocke@seiu32bj.org

If to Defendants:

Richard Ziskin, Esq.
The Ziskin Law Firm, LLP
6268 Jericho Tpke., Suite 12A
Commack, NY 11725
(631) 462-1417
Richard@ziskinlawfirm.com

Edward M. Spiro, Esq.
Morvillo Abramowitz Grand Iason & Anello
P.C.
565 Fifth Ave.
New York, NY 10017
(212) 880-9460
Espiro@maglaw.com

66. Except for written notices of the Defendants' non-payment issued by the State, City, or the Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 52 and 54 respectively, all communications from any Party to another Party concerning this Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel for each Party, unless such communications are sent by email and a reply is written without objection to the electronic means of communication.

67. In any subsequent investigation, civil action, or proceeding by the State or City to enforce this Agreement, or for violations of the Agreement, the Defendants expressly agree and

acknowledge that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Agreement, and that the State or City may use statements, documents or other materials produced or provided by the Defendants prior to or after the effective date of this Agreement.

68. If a court of competent jurisdiction determines that any of the Defendants has breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described in Paragraphs 52 and 54, the Defendants shall pay to the Attorney General and/or to the Relator the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

69. Any headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

70. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Supreme Court of the State of New York, New York County.

71. This Agreement is effective on the date (the "Effective Date") when Defendants receive fully executed copies of each of this Agreement and the Stipulation of Settlement by and between Brooklyn Warehouse 180 LLC, Mica Gabe Brooklyn LLC, and the Office of the Comptroller of the City of New York; in the matter, *In re Brooklyn Warehouse 180 LLC, et al.*, Comptroller's Labor Law File No. 20160313 / HPD's Docket No. TEO10309. Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

72. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

73. This Agreement is not intended and should not be construed as an admission of liability by the Defendants except as specifically set forth herein and is not intended for use or to be relied upon by any third party in any other proceeding.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: November 26, 2019

LETITIA JAMES
New York State Attorney General

By: 
Thomas Teige Carroll

Bureau Chief
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10005
Tel.: (212) 416-6012

Attorney for the State of New York

THE CITY OF NEW YORK

Dated: November __, 2019

JAMES E. JOHNSON
Corporation Counsel of the City of New
York

By: _____
Gail Rubin

Chief
Affirmative Litigation
Corporation Counsel
100 Church Street, Room 20-83
New York, New York 10007
(212) 356-2030

Attorney for the City of New York

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

THE STATE OF NEW YORK

Dated: November ____, 2019

LETITIA JAMES
New York State Attorney General

By: _____
Thomas Teige Carroll

Bureau Chief
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10005
Tel.: (212) 416-6012

Attorney for the State of New York

THE CITY OF NEW YORK

Dated: November 4, 2019

JAMES E. JOHNSON
Corporation Counsel of the City of New
York


By: 
Gail Rubin

Chief
Affirmative Litigation
Corporation Counsel
100 Church Street, Room 20-83
New York, New York 10007
(212) 356-2030

Attorney for the City of New York

THE DEFENDANTS

Dated: November 5, 2019




Brooklyn Warehouse 180 LLC
By: Richard Ziskin
Title: Authorized Signatory

Dated: November __, 2019

Mica Gabe Brooklyn LLC
By: Ramin Shalom
Title: Authorized Signatory

Dated: November 5, 2019

THE ZISKIN LAW FIRM, LLP

By: 

Richard Ziskin, Esq.

6268 Jericho Tpke., Suite 12A
Commack, NY 11725
Tel.: (631) 462-1417

Attorney for the Defendants

Dated: November __, 2019

MORVILLO ABRAMOWITZ GRAND IASON &
ANELLO P.C.

By: _____
Edward M. Spiro, Esq.

565 Fifth Ave.
New York, NY 10017
(212) 880-9460

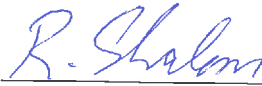
*Attorney for Defendant Mica Gabe Brooklyn
LLC*

THE DEFENDANTS

Dated: November __, 2019

Brooklyn Warehouse 180 LLC
By: Richard Ziskin
Title: Authorized Signatory

Dated: November 4, 2019



Mica Gabe Brooklyn LLC
By: Ramin Shalom
Title: Authorized Signatory

Dated: November __, 2019

THE ZISKIN LAW FIRM, LLP

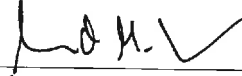
By: _____
Richard Ziskin, Esq.

6268 Jericho Tpke., Suite 12A
Commack, NY 11725
Tel.: (631) 462-1417

Attorney for the Defendants

Dated: November 6, 2019

MORVILLO ABRAMOWITZ GRAND IASON &
ANELLO P.C.

By: 

Edward M. Spiro, Esq.

565 Fifth Ave.
New York, NY 10017
(212) 880-9460

*Attorney for Defendant Mica Gabe Brooklyn
LLC*

RELATOR SEIU LOCAL 32BJ

Dated: November 4, 2019

Kate Ferranti
SEIU Local 32BJ
By: Kate Ferranti
Its: Chief of operations

Dated: November __, 2019

MUELLER LAW LLP

By: _____
William L. Hurlock, Esq.

363 Bloomfield Ave., Suite 2-c
Montclair, NJ 07042
(973) 233-8290

Attorney for the Relator

RELATOR SEIU LOCAL 32BJ

Dated: November __, 2019

SEIU Local 32BJ

By: _____

Its: _____

Dated: November 5, 2019

MUELLER LAW LLP

By: 

William L. Hurlock, Esq.

363 Bloomfield Ave., Suite 2-c
Montclair, NJ 07042
(973) 233-8290

Attorney for the Relator

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
FOR THE COUNTY OF NEW YORK

THE STATE OF NEW YORK and THE
CITY OF NEW YORK, ex rel. SEIU
LOCAL 32BJ,

Plaintiff,

- against -

BROOKLYN WAREHOUSE 180 LLC
and MICA GABE BROOKLYN LLC,

Defendants.

NOTICE OF DISCONTINUANCE

Index No. 100111/2018

PLEASE TAKE NOTICE that pursuant to CPLR § 3217(a)(1), the Attorney General of the State of New York, having heretofore notified the Court pursuant to State Finance Law § 190(2)(c)(i) of her intention to supersede as plaintiff in the above-captioned *qui tam* action, and the Relator SEIU Local 32BJ, now hereby discontinue this Action with prejudice and without costs to any party.

EXHIBIT A

Dated: November ____, 2019
New York, New York

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By: /DRAFT
David E. Farber
Assistant Attorney General
Taxpayer Protection Bureau
Office of the Attorney General of the
State of New York
28 Liberty Street, 21st Floor
New York, New York 10005
(212) 416-6507
Counsel for the State of New York

By: /DRAFT
William Hurlock, Esq.
Mueller Law LLC
363 Bloomfield Ave., Suite 2-c
Montclair, NJ 07042
(973) 233-8290
Counsel for Relator

TO:

Richard Ziskin, Esq.
The Ziskin Law Firm, LLP
6268 Jericho Tpke., Suite 12A
Commack, NY 11725
(631) 462-1417
Counsel for Defendants

Edward M. Spiro, Esq.
Morvillo Abramowitz Grand Iason & Anello P.C.
565 Fifth Ave.
New York, NY 10017
(212) 880-9460
Counsel for Mica Gabe Brooklyn LLC

(By U.S. mail and E-mail)