

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

THE STATE OF NEW YORK *ex rel.*

████████████████████,

Plaintiff,

-against-

MORGAN FUEL & HEATING COMPANY,  
INC.,

Defendants.

Index No. 101746/2015

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the State of New York (the “State”); (ii) relator ████████████████████ (the “Relator”); and (iii) Morgan Fuel & Heating Company, Inc. (also known as “Bottini Fuel”), Mid-Hudson Park Management Corp., Toje Realty, Inc., Carriage Hill Apartments LLC, Woodhill Fletcher Apartments LLC, Anthony Bottini, Mark Bottini, and Brian Bottini (collectively “Defendants”), 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 September 23, 2015, Relator filed a *qui tam* action (the “Action”) captioned *State of New York ex rel. Dutchess Relator LLC v. Morgan Fuel & Heating Company, et al.*, Index No. 101746/2015 (N.Y. Sup. Ct., New York County) pursuant to the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* (“NYFCA”), alleging that Defendants knowingly made, used, or caused to be made or used,

false statements and records that were material to Defendants' obligation to pay or transmit money to the State of New York; and

WHEREAS, the Office of the Attorney General thereafter commenced an investigation in connection with the allegations of the Relator's complaint; and

WHEREAS, as a result of that investigation, the State contends that it has certain civil claims against certain Defendants under the NYFCA; and

WHEREAS, Defendant Bottini Fuel will enter a guilty plea to the misdemeanor of falsifying business records in the second degree, pursuant to a separate agreement with the Office of the Attorney General's Criminal Enforcement and Financial Crimes Bureau (hereinafter "Bottini Fuel Misdemeanor Plea Agreement") and pay \$1,171,884.31 to non-governmental customers in restitution as a term of the Bottini Fuel Misdemeanor Plea Agreement and an additional \$590,887.73 in restitution to Government Customers as a term of that agreement; and

WHEREAS, the State and Relator hereby agree to discontinue any claims in the Action against any other individuals named as defendants in the Action that are not party to this Agreement;

WHEREAS, to avoid the time, expense, and distraction of litigation of the above civil claims, the Parties have determined and hereby agree that settlement is in each of their best interests, and the Office of the Attorney General has agreed to accept the terms of the Agreement and discontinue its investigation in connection with the allegations of the Complaint in the Action; and

WHEREAS, Relator claims entitlement under State Fin. Law § 190(6) to a share of the proceeds of this Agreement and to Relator's reasonable expenses, attorney's fees and costs; and

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:

### **COVERED CONDUCT**

1. The conduct described in the foregoing Paragraphs 2 through 20 is hereinafter referred to as the "Covered Conduct."
2. Morgan Fuel & Heating Company, which conducts business under the name Bottini Fuel, is a corporation with its headquarters in Wappingers Falls, New York, that provides heating oil to customers throughout New York's Hudson Valley.
3. As described below, from 2004 to 2016, Bottini Fuel improperly retained customer overpayments and duplicative payments for heating oil. Bottini Fuel did not inform customers that they had overpaid for heating oil; instead, the company swept excess customer balances out of customer accounts and utilized these proceeds to benefit its owners and employees involved in the conduct described herein.

#### **Bottini Fuel and Customer Balance Accumulation**

4. Anthony Bottini, Brian Bottini, and Mark Bottini ("the Owners") own and manage Bottini Fuel. The company employs hundreds of individuals and has annual revenue over \$100 million.

5. In addition to serving individual and business customers, Bottini Fuel provides heating oil to several state and local government customers throughout the Hudson Valley (hereinafter “Government Customers”). These customers include local school districts, prisons, town governments, and state agencies, among others.

6. In order to track changes to and payments by its customers, Bottini Fuel maintains an internal electronic account record for each customer that reflects, among other information, fuel delivered, services provided, payments made, and amounts due. When the amount of money received from a customer exceeds the value of products or services provided by the company to the customer at a given point in time, the customer account will reflect a “credit balance.”

7. Credit balances may accumulate for a number of reasons, including when (i) customers pre-purchase set amounts of fuel during the off-season, (ii) customers enter into budgeted monthly payment plans to average payments throughout the year, or (iii) customers unintentionally make an overpayment and/or duplicate payment on a balance due.

*Bottini Fuel’s Practice of Sweeping Customer Credit Balances*

8. Normally, heating oil providers would either apply credit balances to future purchases of oil or refund the credit balance to the customer. Rather than doing either of these things, Bottini Fuel regularly diverted credit balances to the use of its owners and complicit employees.

9. Within Bottini Fuel’s internal electronic accounting system, Bottini Fuel regularly transferred credit balances out of customer accounts to fictitious intermediate accounts (hereinafter “Dummy Accounts”) in the company’s sales database.

10. These Dummy Accounts had no actual customer transactions (i.e., fuel purchases), and contained falsified contact information (e.g., such generic terms as “Main Street”).

11. In certain instances, credit balances that had been transferred to a particular Dummy Account were then transferred to customer accounts held by (i) Bottini Fuel’s Owners, (ii) Bottini Fuel’s friends, family members, and certain employees, and (iii) businesses in which Bottini Fuel’s Owners held an interest (collectively “Bottini-Related Individuals and Entities”).

12. These transfers would offset money owed for fuel usage by the Bottini-Related Individuals and Entities. In essence, the credit balances of regular Bottini Fuel customers were used to reduce debit balances on the accounts for Bottini-Related Individuals and Entities.

13. After the transfers were made, the respective customer account would no longer show a credit balance, and instead would show a balance of \$ 0. Subsequent bills and/or invoices to customers, including Government Customers, would similarly reflect a zero balance.

14. For example, the Webutuck Central School District made a duplicate payment to Bottini Fuel of \$4,729.50 in March and April of 2009. In October 2010, Bottini Fuel removed the credit balance from the school district account and transferred it to a Dummy Account. After approximately \$23,000 in credit balances were reflected in the Dummy Account from this and other transfers, Bottini Fuel transferred the credit balances to accounts of Bottini-Related Individuals and Entities.

15. As another example, in November 2008 the Rondout Valley Central School District decided to change heating oil providers, but still had an approximately \$83,000 credit balance in its account. Because the District was apparently unaware of the credit amount, its account with Bottini became inactive. In April 2009, Bottini Fuel records indicated that the company changed the name of the account from Rondout Valley Central School District to the name of a longtime acquaintance of the Bottini family. This account then served as a Dummy Account. In November 2009, that \$83,000 in credit balances was transferred to accounts of various Bottini-Related Individuals and Entities.

16. At the specific direction of senior management at Bottini Fuel, this practice was carried out by the accounting personnel at Bottini Fuel who oversaw the customer database.

17. The Owners all benefited from the conduct because credit balances from customer accounts were transferred into the Dummy Accounts and then transferred into Owner accounts, or accounts in which the Owners held an interest, and acted to reduce the debit balances in those accounts.

18. In the course of the scheme, Bottini Fuel transferred credit balances from hundreds of Hudson Valley customers, including 60 Government Customers. A list of the Government Customers harmed can be found in Appendix A.

19. In the course of the scheme from 2004 to 2016, Bottini Fuel transferred \$1,762,772.04 in customer credit balances from the accounts of its customers (\$1,171,884.31 from the accounts of individuals and businesses in the Hudson Valley and an additional \$590,887.73 from Government Customers).

20. Bottini Fuel submitted invoices for current deliveries to its Government Customers that failed to state the total credit balance owed to the respective customers, so that Government Customers would not know that they had credit balances on their accounts. Such information was material to Bottini Fuel's obligation to remit funds associated with customer credit balances to the Government Customers.

## **TERMS AND CONDITIONS**

### **Settlement Amount**

21. As a term of this Agreement, Bottini Fuel admits the Covered Conduct and acknowledges that the conduct described in the Covered Conduct with respect to Government Customers violated the New York False Claims Act.

22. Defendant Bottini Fuel will pay the sum of three million, two hundred and sixty-two thousand, seven hundred and seventy-two dollars, and four cents (\$3,262,772.04) in U.S. dollars (the "Settlement Amount") to resolve the Action and the Office of the Attorney General's investigation. This amount represents the damages and penalties being recovered by the State (including \$1,171,884.31 to non-governmental customers in restitution to be paid pursuant to the Bottini Fuel Misdemeanor Plea Agreement, \$590,887.73 to Government Customers in restitution to be paid pursuant to the Bottini Fuel Misdemeanor Plea Agreement, and \$1,500,000 in New York False Claims Act damages and penalties), the Relator's share, *i.e.*, the share to which the Relator is entitled under New York State Finance Law § 190(6), as well as the State's attorney's fees and costs.

23. The Settlement Amount is divided into four portions: a portion paid to the State under the terms of this Agreement ("State's Share"), the restitution paid to non-governmental customers pursuant to the Bottini Fuel Misdemeanor Plea Agreement, the

restitution paid to Government Customers pursuant to the Bottini Fuel Misdemeanor Plea Agreement, and a portion paid to the Relator (“Relator’s Share”). The Relator’s Share is the portion to which the Relator is entitled under New York State Finance Law § 190(6).

24. Within ten (10) calendar days of the Effective Date (defined below) of this Agreement, Defendant Bottini Fuel agrees to pay the State’s Share of the Settlement Amount in the sum of one million, eight thousand, six hundred and forty two (\$1,008,642) U.S. dollars. Such payment will be made pursuant to instructions provided by the Office of the Attorney General.

25. In addition, within ten (10) calendar days of the Effective Date (defined below) of this Agreement, Defendant Bottini Fuel agrees to pay the Relator’s Share of the Settlement Amount in the sum of four hundred and ninety one thousand, three hundred and fifty eight (\$491,358) in U.S. dollars. Such payment shall be made pursuant to instructions provided by Relator’s counsel.

26. Defendant Bottini Fuel agrees that it 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 amount due under this Agreement.

27. In consideration of the obligations of Defendants as set forth in this Agreement, Relator and the State, within thirty (30) days after the Effective Date (defined below) of this Agreement, shall file, pursuant to CPLR 3217(a), a Notice of Discontinuance of the Action, subject to the exceptions set forth in this Agreement.



## Releases

28. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Defendants set forth in this Agreement, conditioned upon the full payment by Defendant Bottini Fuel of the Settlement Amount and subject to Paragraph 36 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment to the State under the Agreement, whichever is later), the State releases Defendants from any civil or administrative monetary claim the State has or may have for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*

29. Notwithstanding any term of this Agreement, the State specifically does not release any person or entity from any of the following liabilities:

- a. Any civil, criminal, or administrative liability arising under state or municipal tax laws;
- b. Any criminal liability;
- c. Any civil liability that Defendants have or may have under any state statute, regulation, or rule not covered by this Agreement;
- d. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage arising from the Covered Conduct;

- h. Any liability for failure to deliver goods or services due; and
- i. Any civil or administrative liability of individuals, except as provided for herein.

30. In consideration of the obligations of Defendants in this Agreement, conditioned upon the full payment by Defendant Bottini Fuel of the Settlement Amount, Relator, for itself, and for its heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, releases Defendants from any civil monetary claim Relator has on behalf of the State or any local governments within the State for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*; provided, however, that nothing in this Agreement shall preclude Relator from seeking to recover Relator's expenses or attorney's fees and costs from Defendants, pursuant to N.Y. State Fin. Law § 190 or for seeking redress pursuant to N.Y. State Fin. Law § 191.

31. Defendants, for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally release the State, its 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 Defendants have asserted, could have asserted, or may assert in the future against the State, its agencies, officers, employees, servants, attorneys, agents and assigns, related to the Covered Conduct and the State's investigation and prosecution thereof.

32. Defendants for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally release Relator (including any and all members of [REDACTED] in their

personal and corporate capacities), its heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Defendants have asserted, could have asserted, or may assert in the future against the Relator (including any and all members of [REDACTED] in their personal and corporate capacities), its heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct and Relator's and the State's investigations and prosecution concerning the Action.

33. The Relator, for itself individually, and for its heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State, its 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, arising out of the filing of the Action or from any other claim for a share of the settlement proceeds. Relator accepts the payment described in Paragraph 25 in full settlement of any claims Relator may have against the State under this Agreement. This Agreement does not resolve or in any manner affect any claims the State has or may have against Relator arising under State tax laws, or any claims arising under this Agreement.

34. Relator, and each of its respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, agrees not to object to this Agreement and agrees and confirms that this Agreement is fair, adequate, and reasonable pursuant to New York State Finance Law § 190(5)(b)(ii).

35. The State has agreed to the terms of this Agreement based on, among other things, the representations made to the Office of the Attorney General by Defendants and their counsel. To the extent that any material representations are later found to be inaccurate or misleading, this Agreement is voidable by the Office of 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. Defendants acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

### **Bankruptcy and Non-Payment**

36. If within ninety-one (91) days after the Effective Date of this Agreement or of the date of any payment made under this Agreement, any or all of the Defendants or a third party commences against any or all of the Defendants in 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 or all of the Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any or all of the Defendants or for all or any substantial part of its or their assets, Defendants agree as follows:

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

- b. If any 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, at its sole option, may rescind the releases in this Agreement insofar as it affects the State and bring any civil and/or administrative claim, action, or proceeding against any or all Defendants for the claims that would otherwise be covered by the releases provided above, and Defendants agree that (i) any such claims, actions, or proceedings brought by the State 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 Defendants shall not argue or otherwise contend that the State'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 within 60 calendar days of written notification to Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the State has a valid claim against Defendants in the amount of treble damages plus penalties under the New York False Claims Act, 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. Defendants acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

37. In the event of the failure by Defendant Bottini Fuel to make any or all payments of the Settlement Amount, including the State's Share and the Relator's Share, the State will provide written notice of the non-payment to Defendants. Such notice shall be given to the person and address designated in Paragraph 48 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. Defendants shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendants fail to pay the overdue unpaid balance of their payment obligations under this Agreement within five (5) calendar days from the effective date of the notice of non-payment ("Default"), the State, in its 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 may declare the entire Settlement Amount, 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 Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Pursue all available remedies to enforce this Agreement and for violations of the Agreement. In the event of a Default as described above, Defendants

agree not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to this Paragraph or pursuant to law, and Defendants agree to pay the State all reasonable costs of collection and enforcement of this Agreement, including without limitations, attorney's fees, expenses and court costs; and/or

- c. Rescind its agreement to this Agreement as to Defendants and reinstitute claims, an action or actions against Defendants in this Court. In the event the State reinstitutes such claims, action, or actions, 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 after the written notification to Default to Defendants, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses Defendants may have to any civil or administrative action relating to the Covered Conduct.

38. In the event of the failure by Defendant Bottini Fuel to make any or all payments of the Relator's Share when due, the Relator will provide written notice of the non-payment to Defendants. Such notice shall be given to the person and address designated in Paragraph 48 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. Defendants shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If Defendants fail to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this

Agreement within five (5) 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 Defendants in this Court to collect the unpaid amounts of the Relator’s Share plus applicable interest. Defendants 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 Defendants agree to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney’s fees and expenses.

#### **Additional Terms**

39. Defendants 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.

40. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is



without factual basis. 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.

41. The 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.

42. Except as provided in Paragraph 30 above (which, among other things, preserves Relator's ability to seek attorney's fees and costs), each Party shall bear its own legal and other costs incurred in connection with this matter.

43. 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.

44. This Agreement constitutes the complete agreement between and among the Parties, and may not be amended except by an instrument in writing signed on behalf of all the Parties to this Agreement.

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

46. 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.

47. Any failure by the State to insist upon the strict performance by Defendants and/or Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State, 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 any or all of the Parties. Any failure by Relator to insist upon the strict performance by Defendants of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and 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 any or all of the Defendants.

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

If to the State of New York:

Justin Wagner  
Assistant Attorney General  
NY Attorney General's Office  
Taxpayer Protection Bureau  
28 Liberty Street, 21st Floor  
New York, NY 10005  
(212) 416-6012

If to Relator:

Neil V. Getnick, Esq.  
Getnick & Getnick LLP  
521 Fifth Avenue, 33<sup>rd</sup> Floor  
New York, NY 10175  
(212) 376-5666

If to Defendant:

Paul R. Grand, Esq.  
Morvillo, Abramowitz, Grand, Iason  
& Anello PC  
565 Fifth Avenue  
New York, NY 10017  
(212) 880-9510

49. Except for written notices of Defendant Bottini Fuel non-payment issued by the State or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 37 and 38 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.

50. In any subsequent investigation, civil action, or proceeding by the State to enforce this Agreement, or for violations of the Agreement, 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 may use statements, documents or other materials produced or provided by the Defendants prior to or after the effective date of this Agreement.

51. If a court of competent jurisdiction determines that Defendants have breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described above in paragraphs 37 and 38, Defendants shall pay to the Office of the Attorney General the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

52. 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.

53. 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.

54. This Agreement is effective on the date of signature of the last signatory of the Agreement (the “Effective Date”). Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

55. 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.

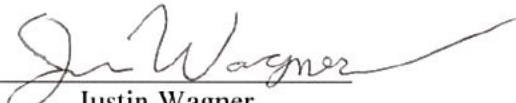
**[Signature pages follow]**

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

THE STATE OF NEW YORK

Dated: Nov. 21, 2018

BARBARA D. UNDERWOOD  
New York State Attorney General

BY:   
Justin Wagner

Assistant Attorney General  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 416-8819

RELATOR



Dated: \_\_\_\_\_

Getnick & Getnick LLP

BY: \_\_\_\_\_  
Neil V. Getnick

521 Fifth Avenue, 33<sup>rd</sup> Floor  
New York, New York 10175  
(212) 376-5666

*Attorney for Relator*

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

THE STATE OF NEW YORK

Dated: \_\_\_\_\_

BARBARA D. UNDERWOOD  
New York State Attorney General

BY: \_\_\_\_\_  
Justin Wagner

Assistant Attorney General  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21<sup>st</sup> Floor  
New York, New York 10005  
(212) 416-8819

RELATOR



Dated: 11/20/18

Getnick & Getnick LLP

BY: Neil V. Getnick  
Neil V. Getnick

521 Fifth Avenue, 33<sup>rd</sup> Floor  
New York, New York 10175  
(212) 376-5666

*Attorney for Relator*

DEFENDANTS (page 1 of 3)

Dated: Nov 19, 2018

Paul R. Grand

  
Paul R. Grand  
*Attorney for Defendant*  
*As to Form*

Dated: \_\_\_\_\_

Morgan Fuel & Heating Company, Inc.

BY: \_\_\_\_\_  
*Mark Bottini, Secretary*

Dated: \_\_\_\_\_

Mid-Hudson Park Management Corp.

BY: \_\_\_\_\_  
*Mark Bottini, President*

Dated: \_\_\_\_\_

Toje Realty, Inc.

BY: \_\_\_\_\_  
*Mark Bottini, President*

DEFENDANTS (page 1 of 3)


Dated: \_\_\_\_\_

Paul R. Grand

\_\_\_\_\_  
*Attorney for Defendant  
As to Form*

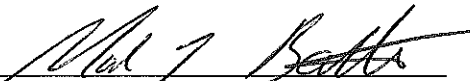
Dated: 11/25/18

Morgan Fuel & Heating Company, Inc.

BY:   
*Mark Bottini, Secretary*

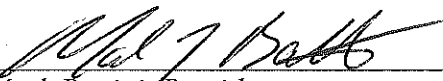
Dated: 11/20/18

Mid-Hudson Park Management Corp.

BY:   
*Mark Bottini, President*

Dated: 11/20/18

Toje Realty, Inc.

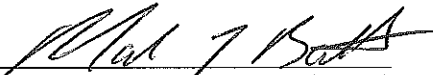
BY:   
*Mark Bottini, President*



DEFENDANTS (page 2 of 3)

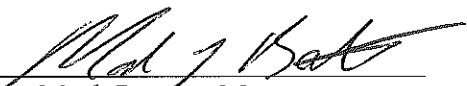
Carriage Hill Apartments LLC

Dated: \_\_\_\_\_

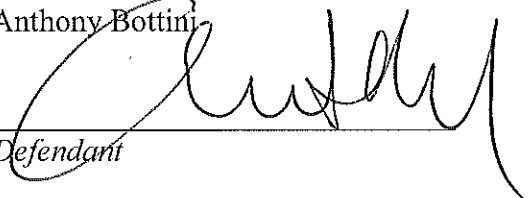
BY:   
Mark Bottini, Managing Member of  
Managing Member of Managing  
Member

Dated: 11/20/18

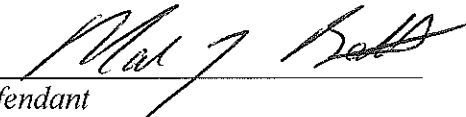
Woodhill Fletcher Apartments LLC

BY:   
Mark Bottini, Managing  
Member of Managing Member  
of Managing Member

Dated: 11/20/18

Anthony Bottini  
  
Defendant

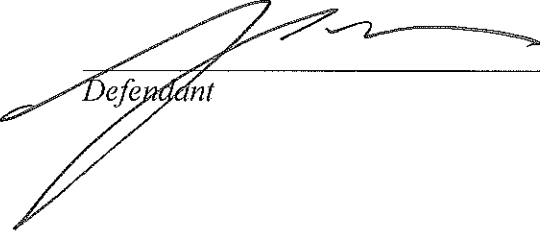
Dated: 11/20/18

Mark Bottini  
  
Defendant

DEFENDANTS (page 3 of 3)

Brian Bottini

Dated: 11/20/18

  
\_\_\_\_\_  
*Defendant*

## APPENDIX A

### List of Governmental Victims

<b>Customer Name</b>	<b>Amount</b>	<b>Occurrences</b>
Taconic Developmental Disabilities Services Organization	\$281,630.15	4
Greenhaven Correctional Facility	\$145,956.55	4
Rondout Valley Central School District	\$ 83,043.99	1
Beacon City School District	\$ 10,375.50	6
Department of Social Services	\$ 9,664.51	2
Saugerties NY Reserve Center	\$ 9,131.89	1
Webutuck Central School District	\$ 5,571.39	2
Hudson River Psych Center	\$ 4,983.09	1
East Ramapo Central School District	\$ 3,815.65	1
Town of Blooming Grove	\$ 3,337.11	1
New York State Office of Mental Health	\$ 3,194.65	2
Woodbourne Correctional Facility	\$ 2,869.72	1
Marlboro Central School District	\$ 2,769.92	1
Town of Saugerties Water & Sewer	\$ 2,429.20	1
Town of Saugerties	\$ 2,275.08	1
NYS Department of Transportation	\$ 2,188.67	2
Town of Monroe	\$ 2,044.21	1
Town of Hunter	\$ 1,950.97	1
Town of Wappinger	\$ 1,611.76	2
Greene County Buildings & Grounds	\$ 1,091.40	1
Town of Stanford	\$ 1,045.84	1
Town of Rochester	\$ 899.09	1
Fishkill Correctional Facility	\$ 888.82	1
Walkill Correctional Facility	\$ 707.04	2
Freehold Volunteer Fire Co.	\$ 694.85	1
Town of Dover	\$ 687.84	1
Town of Union Vale	\$ 498.14	1
East Clinton Fire District	\$ 445.75	1
Greenhaven PC	\$ 386.87	1
Otisville Correctional Facility	\$ 379.00	1
Eastern NY Correctional Facility	\$ 353.38	2
Clermont Fire Station	\$ 343.16	1
Town of New Windsor	\$ 339.74	1
Rhinebeck Central School District	\$ 302.90	1

City of Middletown	\$ 255.93	1
Washingtonville Central School District	\$ 252.60	1
NYS Department of Environmental Conservation	\$ 250.46	5
Town of Jewett	\$ 250.14	1
Orange County Department of Parks	\$ 220.24	4
Village of Hunter	\$ 215.75	1
Hyde Park Central School	\$ 212.67	1
Village of Red Hook	\$ 188.20	1
New York State Parks Recreation & Historic Preservation	\$ 171.99	2
Town of Newburgh	\$ 155.00	1
Stone Ridge Fire District	\$ 150.02	1
Town of Hyde Park	\$ 120.00	1
Mid Orange Correctional Facility	\$ 106.47	1
Hyde Park Free Library	\$ 102.72	1
NYS Parks & Rec, Palisades	\$ 78.48	1
Mamakating Ambulance	\$ 53.45	1
Dutchess County Department of Social Services	\$ 52.31	1
East Jewett Fire Department	\$ 48.19	1
NYS Department Public Works	\$ 26.07	1
Mills Norrie State Park	\$ 21.35	1
County of Ulster	\$ 16.28	1
Catskill OTB	\$ 12.71	1
Dutchess County Community Action Agency	\$ 8.96	2
Ulster County Boces	\$ 5.00	1
NYS ORDA Belleayre Mountain Ski Center	\$ 4.64	1
Arlington Central School District	\$ 0.27	1