

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

STATE OF NEW YORK *ex rel.* [REDACTED]
[REDACTED]

Plaintiff,

-against-

EXPRESS HOSPITALITY GROUP, A&R
FOOD SERVICES, INC., YANKEE
CLIPPER FOOD SERVICES I CORP.,
YANKEE CLIPPER FOOD SERVICES,
INC., R&G FOOD SERVICES, INC.,
ROCCO MANNIELLO, MICHELE
MANNIELLO, AND LISA MANNIELLO,

Defendants.

Index No. 100789/2015

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the State of New York (the “State”); (ii) relator [REDACTED] (the “Relator”); and (iii) A&R Food Services, Inc., R&G Food Services, Inc., Yankee Clipper Food Services I Inc., Yankee Clipper Food Services, Inc., Rocco Manniello (deceased), Michele Manniello, Gelsomina Manniello, and Lisa Manniello (collectively “Defendants”), through their authorized representatives. The above-named parties are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about May 4, 2015, Relator filed a *qui tam* action (the “Action”) captioned *State of New York ex rel. [REDACTED] v. Express Hospitality, et al.*, Index No. 100789/2015 (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 that were material to Defendants’ obligations to pay or transmit money to the State and the City of New York; and

WHEREAS, the Office of the Attorney General (“NYAG”) 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 Executive Law § 63(12); and

WHEREAS, as a result of that investigation, the State contends that it has tax claims against Defendants under the laws of New York State; and

WHEREAS, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties have determined and hereby agree that settlement is in each of their best interests, and the NYAG has agreed to accept the terms of the Agreement; and

WHEREAS, Relator claims entitlement under State Fin. Law § 190(6) and (7) to a share of the proceeds of this Agreement and to Relator’s reasonable expenses, attorney’s fees and costs; and

WHEREAS, the State has an ongoing investigation into other individuals and entities doing business at John F. Kennedy and LaGuardia airports; and

WHEREAS, this Agreement in no manner prejudices claims the State may have against other entities and the individuals associated with them (other than Defendants), concerning the underlying conduct, including any further investigation into such claims.

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 34 is hereinafter referred to as the “Covered Conduct.”
2. This case involves several food-related businesses at John F. Kennedy (“JFK”) and LaGuardia airports that conduct business under the name Express Hospitality Group (“Express Hospitality”).
3. The relevant corporate entities within the Express Hospitality umbrella are:
(i) Yankee Clipper Food Services, Inc. and Yankee Clipper Food Services I Inc. (collectively “Yankee Clipper”), which operate at JFK Airport multiple Panini Express operations, two bars, and a mobile hot dog stand; (ii) R&G Food Services, Inc., which operates the employee cafeteria at Terminal Five at JFK Airport; and (iii) A&R Food Services, Inc., which operates employee cafeterias at Terminal One at JFK Airport, and the American Airlines cafeteria and catering and vending machine businesses at LaGuardia Airport.
4. Rocco Manniello and his son Michele Manniello owned and operated Express Hospitality for many years. Rocco Manniello directed Express Hospitality’s business operations, and he primarily directed the fraudulent schemes described herein.
5. As described below, Rocco Manniello and Express Hospitality engaged in schemes by which certain Express Hospitality businesses intentionally underpaid taxes owed to the State of New York and the City of New York and underpaid amounts owed to the Port Authority of New York and New Jersey (“Port Authority”). Express Hospitality

also engaged in a scheme that compromised the integrity of business operations at JFK Airport.

6. At issue here are the following schemes that were engaged in by Rocco Manniello and certain companies under the Express Hospitality umbrella:

- i. Collecting, but failing to remit New York State and New York City sales tax;
- ii. Underreporting receipts for corporate franchise tax purposes;
- iii. Failing to withhold and pay personal income taxes on some compensation paid to employees;
- iv. Underreporting gross receipts to the Port Authority so as to decrease the amounts of rent due by certain Express Hospitality businesses as a condition of their use of airport facilities; and
- v. Making undisclosed cash payments to a senior airport executive who, in turn, did favors for Rocco Manniello and his business interests.

7. To facilitate these schemes, certain Express Hospitality businesses took steps to maximize their use of cash rather than checks or credit cards. These businesses operated “cash only” registers at various locations where credit card payments were refused at times. In addition, these businesses did not deposit cash in bank accounts, but instead used cash to pay vendors and employees. Notably, Express Hospitality regularly funneled packages of cash to Rocco Manniello. NYAG’s investigation revealed that personnel at an Express Hospitality office at JFK Airport packaged and sent manila envelopes of cash to Rocco Manniello on a weekly basis. The weekly payments varied in size, but in some instances were greater than \$10,000. These envelopes included any excess cash left in the operations from JFK Airport after the businesses paid expenses.

8. Express Hospitality also maintained a double set of accounting books: one that accurately reflected business activity, and one that contained altered numbers and was

used in reporting business activity to the government for tax purposes. Express Hospitality tracked the accurate amount of their sales on an internal spreadsheet that recorded, on a weekly basis, sales at various cash registers located throughout the businesses. Express Hospitality employees sent these spreadsheets to Rocco Manniello for his review on a regular basis. Express Hospitality also maintained a false set of accounting records on the computer program QuickBooks. At the direction of Rocco Manniello¹, Express Hospitality employees caused significant amounts of cash receipts to be omitted from entry into the QuickBooks system. The cash payroll also was omitted from this system. The accounting records maintained on the QuickBooks system served as the basis for tax filings made by Yankee Clipper, R&G Food Services, Inc., and A&R Food Services, Inc.

Sales Tax Fraud

9. New York law imposes sales tax on receipts from the sale of tangible personal property. The aggregate sales tax rate generally applicable in this investigation (State, City and Metropolitan Commuter Transportation District surcharge) is 8.875%. The New York State Department of Tax and Finance (“DTF”) administers these taxes. Once a business registers for sales tax purposes, it becomes a trustee of New York State. The business then is obligated to file tax returns concerning these taxes and pay the total amount of sales tax that it collects from its customers to the State.

10. From January 2011 through December 2015, Yankee Clipper and R&G Food Services, Inc. collected sales tax from customers on sales made during the course of their business, but they did not remit all of this tax to the State.

¹ Rocco Manniello died during the course of the investigation.

11. To hide its scheme, Yankee Clipper and R&G Food Services, Inc. conducted as much business as possible in cash. Yankee Clipper and R&G Food Services, Inc. did not report all of their cash sales to DTF for sales tax purposes.

12. From January 2011 through December 2015, Yankee Clipper and R&G Food Services, Inc. failed to report over \$25 million in sales and failed to remit approximately \$2,221,900 in New York State and New York City sales tax.

13. As a result of the underreporting and underpayment, Yankee Clipper and R&G Food Services, Inc. improperly converted and profited from sales tax that these companies collected as trustees of New York State and New York City.

14. The quarterly sales tax returns filed by Yankee Clipper and R&G Food Services, Inc. contained false statements that were material to an obligation to remit sales tax. The companies caused these tax returns to be filed knowing that they contained false statements.

Underreporting of Receipts for Corporate Tax Purposes

15. Article 9-A of the New York State Tax Law requires that corporations that conduct business in New York State file and pay corporate franchise tax. Corporations are required to submit a Form CT-3 General Business Corporation Franchise Tax Return to New York State.

16. Yankee Clipper and R&G Food Services, Inc. significantly underreported receipts for purposes of the New York State corporate franchise tax.² In addition to

² The relevant companies were S corporations, a status that can allow income to pass through the company to its shareholders for tax purposes. The shareholders of these businesses during the relevant period were Rocco and Michele Manniello.

franchise tax deficiencies, this conduct resulted in Rocco and Michele Manniello underreporting flow-through income on their respective personal income tax returns. The NYAG has found that Yankee Clipper and R&G Food Services, Inc.'s failure to properly report receipts earned by the businesses on corporate franchise tax returns created an aggregate tax deficiency to New York of \$2,826,293 for the tax years 2011 through 2015.

17. Yankee Clipper and R&G Food Services, Inc. caused corporate franchise tax returns to be filed with New York State that contained false statements that were material to their obligation to pay corporate franchise tax, including statements about the companies' receipts. Yankee Clipper and R&G Food Services, Inc. caused these tax returns to be filed even though they knew that the returns contained false statements.

Failure to Withhold Taxes

18. New York State and New York City require employers to withhold tax on compensation paid to employees. The New York State DTF administers these taxes.

19. Yankee Clipper, R&G Food Services, Inc., and A&R Food Services, Inc. (the "Relevant Entities") failed to withhold and pay withholding tax on some of the employee compensation to which the tax was applicable.

20. The Relevant Entities paid their employees primarily in cash. To create the appearance of propriety, the Relevant Entities also paid employees a portion of their income by check and had those payments processed by an authorized payroll company. Each week employees were given envelopes containing a check and cash. Most of the employees' compensation was paid in cash. The Relevant Entities failed to withhold applicable payroll taxes on the cash compensation.

21. An employee affiliated with Express Hospitality prepared spreadsheets that reflected the amounts paid in cash and the amounts paid in check to employees. Rocco Manniello reviewed these spreadsheets on a regular basis and knew that tax was not withheld on the cash compensation.

22. This practice was longstanding. The NYAG analyzed detailed accounting records for Express Hospitality that show that Express Hospitality engaged in this wrongful conduct consistently from January 2011 through December 2015, and that during this time period, Express Hospitality failed to withhold \$508,342 in New York State and New York City tax.

23. Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance tax returns of the Relevant Entities filed with New York State contained false statements that were material to their obligation to pay withholding tax, including false statements about the amount of compensation paid to employees. The Relevant Entities caused these tax returns to be filed knowing that they contained false statements.

Underreporting of Gross Receipts to the Port Authority

24. The Relevant Entities also underreported gross receipts to the Port Authority. Pursuant to their contracts with Terminal One Group Association³ or the Port Authority and in return for the opportunity to use Port Authority facilities to conduct business, the Relevant Entities were required to report and to pay a percentage of their gross receipts to

³ Terminal One Group Association contracts with the Port Authority to handle the day-to-day operations of Terminal One at JFK Airport, including the selection of food concessionaires (such as the businesses run by Rocco Manniello). Terminal One Group Association has a contract with both Yankee Clipper and A&R Food Services, Inc. respectively for certain food services provided at Terminal One of JFK Airport.

the Port Authority. By underreporting their gross receipts, these companies improperly decreased the amounts they were required to pay to the Port Authority.

25. For example, the most recent contract dated March 10, 2015 between Yankee Clipper and Terminal One Group Association required Yankee Clipper to remit approximately 2% of its gross receipts to the Port Authority. Similarly, the most recent contract between R&G Food Services, Inc. and the Port Authority, effective March 30, 2012, required R&G Food Services, Inc. to pay the Port Authority approximately 5% of its gross receipts. In addition, A&R Food Services, Inc.'s September 1, 2013 contract with Terminal One Group Association required A&R Food Services, Inc. to pay the Port Authority approximately 5% of its gross receipts.

26. The Relevant Entities reported gross receipts to the Port Authority respectively on a monthly basis through a "monthly report," which they each submitted to the Port Authority. Along with their monthly report, these entities typically provided a check to the Port Authority for amounts that were owed.

27. At the direction of Rocco Manniello, the Relevant Entities submitted monthly reports that contained gross receipt figures that significantly understated the companies' actual gross receipts. This fraud is evidenced by draft revenue reports that had been prepared by a bookkeeper affiliated with the companies. These draft revenue reports contained gross receipts totals. Routinely, Rocco Manniello manually crossed out these gross receipts totals on the reports and inserted false, lower gross receipts figures. These lower gross receipts figures were then used in the monthly reports that were submitted to the Port Authority.

28. The practice was longstanding. The companies' accounting records show that the misconduct occurred consistently from January 2011 through February 2016.

29. The Port Authority Inspector General's Office reviewed books and records from the Relevant Entities and determined that these entities failed to pay \$351,357 to the Port Authority from January 2011 through February 2016 as a result of the underreporting.

30. The monthly reports submitted by the Relevant Entities to the Port Authority contained false statements about the companies' gross receipts that were material to these companies' obligations to pay the Port Authority. The companies knew that the statements in these monthly reports were false when they submitted the reports.

Undisclosed Payments to an Airport Executive

31. At the direction of Rocco Manniello, Express Hospitality used some of the cash generated by the businesses to make secret monthly payments to an airport executive at JFK Airport (hereinafter the "Airport Executive"). The Airport Executive was not an employee of the Port Authority.

32. The Airport Executive who received the secret payments had significant influence over Express Hospitality's ability to conduct and expand its business at JFK Airport.

33. In return for these monthly cash payments, the Airport Executive provided Rocco Manniello and various Express Hospitality businesses with favorable treatment. Among other things, the Airport Executive: (i) facilitated deals that granted certain Express Hospitality businesses favorable rent terms with the Port Authority; (ii) offered Rocco Manniello opportunities for new food services businesses that could be developed at JFK

Airport; (iii) provided security passes to certain employees of Express Hospitality outside the normal process for obtaining airport security passes; and (iv) ensured that Express Hospitality catered certain events at JFK Airport.

34. The payments to the Airport Executive were longstanding, and Express Hospitality paid hundreds of thousands of dollars in cash to the Airport Executive. Express Hospitality concealed these payments to the Airport Executive by, among other things, labeling the payments “rent” or “petty cash” in internal accounting journals and by delivering the payments to the Airport Executive in manila envelopes full of cash.

35. A&R Food Services, Inc., R&G Food Services, Inc., and Yankee Clipper admit the Covered Conduct. The remaining Defendants neither admit nor deny the Covered Conduct.

TERMS AND CONDITIONS

Settlement Amount

36. Defendants collectively will pay the sum of thirteen million dollars (\$13,000,000.00) in U.S. dollars (the “Settlement Amount”) to resolve the Action and the NYAG’s investigation and claims that are the subject of a separate closing agreement (“Closing Agreement”) between Defendants and the New York State DTF. This amount represents the damages and penalties sought by the State for alleged violations of the NYFCA, along with taxes and interest under the N.Y. Tax Law, 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.

37. The Settlement Amount is divided into two portions: a portion paid to the State (“State’s Share”), 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).

38. Defendants agree to pay the State's Share of the Settlement Amount in the sum of ten million, one hundred forty thousand dollars (\$10,140,000) U.S. dollars on or before the dates specified in Exhibit A. Such payments will be made pursuant to instructions provided by the NYAG.

39. In addition, the Defendants agree to pay the Relator's Share of the Settlement Amount in the sum of two million, eight hundred sixty thousand dollars (\$2,860,000) in U.S. dollars on or before the dates specified in Exhibit A. Such payment shall be made through electronic transfer to a trust account for Relator, through its counsel, in accordance with written instructions to be provided by its counsel.

40. 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 return, for any portion of the amount due under this Agreement or the Closing Agreement.

41. Defendants submitted financial disclosures to the NYAG on March 27, 2017, and April 21, 2017. In reliance on the representations made by Defendants in these financial disclosures, NYAG has agreed to accept the Settlement Amount in lieu of a higher amount.

42. Defendants Michele Manniello and Gelsomina Manniello shall execute and deliver, at the time of the execution and delivery of this Agreement, the accompanying Affidavits of Judgment of Confession (attached hereto as Exhibits B and C, respectively), in the amounts of \$1,300,000 and \$11,700,000 respectively.

43. In the event that Defendants default or fails to timely and properly make payment as set forth in paragraph 36, the NYAG shall provide Michele Manniello and Gelsomina Manniello thirty (30) days written notice, by first class mail, to cure such default or failure, and upon his and/or her failure to cure such default or failure, NYAG may file and enter the applicable Confession of Judgment, at any time and without further notice, against Michele Manniello and Gelsomina Manniello, less any amounts paid by Defendants.

44. 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. The dismissal is to be without prejudice. Within fifteen (15) days upon receipt of all of the payments required by Paragraph 36 above, the Relator and the State shall file an Amended Notice of Discontinuance providing that the dismissal is with prejudice.

Releases

45. 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 Defendants 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.* and Executive Law § 63(12).

46. This Agreement 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.

47. Nothing herein affects the obligations or duties of Defendants under the Closing Agreement contemporaneously executed with DTF, nor the rights of DTF under that Closing Agreement.

48. In consideration of the obligations of Defendants in this Agreement, conditioned upon the full payment by Defendants 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.

49. 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.

50. Defendants for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally release Relator, 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, 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.

51. 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 39 in full settlement of any claims Relator may have against the State under this Agreement or as a result of the Action. 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.

52. 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).

Bankruptcy and Non-Payment

53. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, any of the Defendants or a third party commences 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, 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) 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 Defendants.
- b. If 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 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 its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

54. In the event of the failure by Defendants to make any or all payments of the Settlement Amount, including the State's Share and the Relator's Share, when due according to the schedule in Exhibit A, 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 67 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 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:

- 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. Rescind its agreement to this Agreement as to Defendants and pursue all available remedies to enforce this 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, and Defendants agree to pay the State all reasonable costs of collection and enforcement of this Agreement, including attorney’s fees and expenses; and/or
- c. Rescind its agreement to this Agreement as to Defendants and reinstitute an action or actions against Defendants in this Court. In the event the State reinstitutes this action, 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 Defendants that this Agreement has been rescinded, 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.

55. In the event of the failure by Defendants to make any or all payments of the Relator's Share when due according to the schedule in Exhibit A, 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 67 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

56. To the extent further investigation or litigation relating to the Covered Conduct proceeds against individuals or entities that are not Parties to or released by this Agreement, each Defendant agrees to be available, upon reasonable notice, to meet with attorneys or other representatives of the State either in person or by telephone, and to answer questions related to issues concerning the Covered Conduct. Each Defendant agrees that to the extent such investigation or litigation proceeds, if so requested or demanded by the State, the Defendant will testify in subpoena hearings, depositions, and/or at trial. Each Defendant also agrees to make available to the State, upon reasonable notice, documents or other materials relevant to any such investigation or litigation.

57. The State has agreed to the terms of this Agreement based on, among other things, the representations made to the NYAG 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 NYAG 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 represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion.

58. 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. Defendants represent and warrant that they have read the Agreement and they fully understand all of its terms and conditions. Defendants represent and warrant that they understand all of the legal consequences of the Agreement and that they have had an opportunity to discuss the Agreement with an accountant of their choice and they understand all of the tax consequences of the Agreement.

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

60. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and therefore shall not be construed against any Party for that reason in any subsequent dispute.

61. Except as provided in Paragraph 36 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.

62. 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.

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

64. 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 NYAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the NYAG.

65. 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.

66. 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.

67. 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
Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, NY 10271
(212) 416-6012

If to Relator:

Andrea Fischer, Esq.
The Fischer Legal Group

1745 Broadway, Suite 1700
New York, New York 10019
(212) 328-0142

If to Defendants:

John Servider, Esq.
65-12 69th Place
Middle Village, NY 11379
(718) 894-6300

68. Except for written notices of Defendants' non-payment issued by the State or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 54 and 55 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.

69. If a court of competent jurisdiction determines that Defendants have breached this Agreement, Defendants shall pay to the NYAG and/or to Relator the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

70. 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.

71. 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.

72. 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.

73. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitutes one and the same agreement.

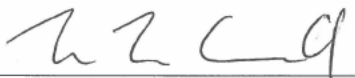
[Signature pages follow]

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

THE STATE OF NEW YORK

Dated: 7 Sept 2017

ERIC T. SCHNEIDERMAN
New York State Attorney General

BY: 
Thomas Teige Carroll
Justin Wagner

Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, New York 10271
(212) 416-6561

Attorneys for the State


Dated: _____

Fischer Legal Group

By: _____
Andrea Fischer

1745 Broadway, Suite 1700
New York, New York 10019
(212) 328-0142

Attorney for Relator

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

THE STATE OF NEW YORK

Dated: _____

ERIC T. SCHNEIDERMAN
New York State Attorney General

BY: _____
Thomas Teige Carroll
Justin Wagner

Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, New York 10271
(212) 416-6561

Attorneys for the State

Dated: 8/24/17

Fischer Legal Group

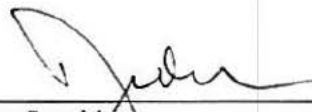
By: 
Andrea Fischer

1745 Broadway, Suite 1700
New York, New York 10019
(212) 328-0142

Attorney for Relator

DEFENDANTS (page 1 of 2)

Dated: 9/7/17



John Servider
*Attorney for Defendants
As to Form*

Dated: 9/7/17




R&R Food Services, Inc.
Defendant

Dated: 9/7/17



R&G Food Services, Inc.
Defendant

Dated: 9/7/17



Yankee Clipper Food Services I Inc.
Defendant


Dated: 9/7/17



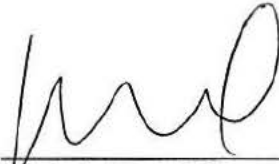
Yankee Clipper Food Services, Inc.
Defendant

DEFENDANTS (page 2 of 2)

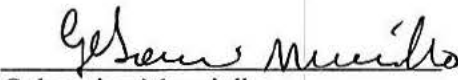
Dated: 9/7/17


The Estate of Rocco Manniello
Defendant (deceased)

Dated: 9/7/17


Michele Manniello
Defendant

Dated: 9/7/17


Gelsomina Manniello
Defendant

Dated: 9/7/17


Lisa Manniello
Defendant

EXHIBIT A

Payments by Defendants to the State and Relator

State's Share

Date Payment Due	Amount
September 12, 2017	\$500,000
March 12, 2018	\$500,000
September 12, 2018	\$250,000
March 12, 2019	\$1,890,000
September 12, 2019	\$2,000,000
March 12, 2020	\$2,500,000
September 12, 2020	\$2,500,000

Relator's Share

Date Payment Due	Amount
September 12, 2017	\$500,000
March 12, 2018	\$500,000
September 12, 2018	\$1,750,000
March 12, 2019	\$110,000