

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

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NYS Office of the Attorney General  
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IN THE MATTER OF THE INVESTIGATION OF  
ERIC T. SCHNEIDERMAN, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK,

OF

DIVINE INVESTORS LLC

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ASSURANCE OF  
DISCONTINUANCE  
PURSUANT TO  
EXECUTIVE LAW § 63(15)

AOD No. 15-092

**ASSURANCE OF DISCONTINUANCE**

In 2013, the Office of Attorney General of the State of New York (“the Attorney General”) commenced investigation of DIVINE INVESTORS LLC and its owner and operator, HIREN PATEL (collectively “Divine”) pursuant to New York Executive Law § 63(12), and examined whether Divine failed to pay its employees certain required wages, and failed to comply with uniform maintenance requirements, in violation of the Fair Labor Standards Act (“FLSA”); Article 6 (regarding payment of wages) and Article 19 (Minimum Wage Act) of the New York Labor Law (“NYLL”); and New York Codes, Rules, and Regulations (“N.Y.C.R.R.”), Title 12, Chapter II, Subchapter B, Part 146 (“Hospitality Wage Order”). This Assurance of Discontinuance (“Assurance”) contains the Attorney General’s Findings in connection with his investigation of Divine and the relief agreed to by the Attorney General and Divine (“the parties”).

## **RELEVANT STATUTORY FRAMEWORK**

1. The New York Labor Law requires that employers pay workers all wages for all hours worked on a weekly basis. New York Labor Law § 191(1)(a). The Fair Labor Standards Act and New York Labor Law also require that employers pay covered employees the minimum wage, currently \$7.25 per hour under federal law and \$8.75 per hour under state law, and require employers to pay covered employees at one and one half times an employee's regular rate for hours worked over forty in a week. 29 U.S.C. §§ 206(a), 207; 12 N.Y.C.R.R. §§ 146-1.2, 1.4. Hours worked at different locations of the same business must be combined in calculating overtime pay. 29 U.S.C. §§ 206(a), 207; 12 N.Y.C.R.R. §§ 146-1.2, 1.4.

2. Employers must also pay one additional hour of pay at the basic minimum hourly rate on each day when an employee's spread of hours exceeds ten. 12 N.Y.C.R.R. § 146-1.6.

3. Under the New York Labor Law, an employee in the restaurant industry who by request or permission of the employer reports for duty on any day must be paid "call-in pay" for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is less. 12 N.Y.C.R.R. § 146-1.5.

4. Employers are required to notify employees, at their time of hire and in the employees' primary language, of their rate of pay and obtain a written acknowledgement from employees of receipt of notice, and provide a pay record to employees with all payments reflecting gross payments, deductions, and net payments. NYLL §§ 195(1) and (3); 12 N.Y.C.R.R. §§ 146-2.1-2. Employers are also required to create and maintain contemporaneous and accurate payroll records for six years showing each employee's regular and overtime rates, claimed tip credit, deductions, daily and weekly hours worked and gross and net wages paid. NYLL § 195(4); 12 N.Y.C.R.R. § 146-2.3.

5. The New York Labor Law prohibits unlawful deductions from wages. NYLL § 193. Such prohibited deductions include deductions for spoilage, breakage, nonpayment by a customer, cash shortages, or for items that are lost or stolen, required uniforms, and failure to reimburse employees for expenses necessary to carry out duties assigned by his or her employer. NYLL §§ 193, 198-b. 12 N.Y.C.R.R. §§ 146-1.8, 2.7. The New York Labor Law requires that employers pay employees promised wages free and clear, and prohibits employers from requiring an employee to pay for items such as cash register shortages or counterfeit bills. NYLL § 193; 12 N.Y.C.R.R. §§ 146- 2.7; *see also* 29 U.S.C. 206, 29 C.F.R. § 531

6. Moreover, employees must be reimbursed for work-related expenses such as food safety certificates in the legally required timeframe. NYLL § 198-c(2).

7. Where employers require employees to wear a uniform, the employer must pay employees uniform maintenance pay in an amount set by law (varying by hours worked, currently \$10.90 per week for employees working over 30 hours per week) unless (a) the uniform can be regularly washed with personal garments and the employer furnishes uniforms to employees consistent with the average number of days per week worked by the employee, or (b) the employer offers laundry services at a reasonable frequency. 12 N.Y.C.R.R. § 146-1.7.

8. Employers are only permitted to pay a set weekly salary to executive, administrative, or professional employees who meet specific requirements such that they can properly classified as exempt, including a minimum weekly salary. The minimum salaries to be classified as exempt are as follows: \$543.75 per week beginning January 1, 2011, \$600 per week beginning December 31, 2013, and \$656.25 per week beginning December 31, 2014. FLSA § 13(a)(1); 29 CFR Part 541; 12 NYCRR 146-3.2(c)(1)(e)(1)-(3).

9. Employers are required to comply with the New York City Earned Sick Time Act with regard to employees in New York City. New York City Administrative Code §§ 20-911 to 20-924.

## **FINDINGS**

### **Introduction and Background**

10. Divine is a KFC Corporation (“KFC”) franchise owned by Hashmukh Patel, Hiren Patel, Nirav Modi, Himanshu Patel, and Dipak S. Patel. Hiren Patel operates Divine’s 13 KFC franchise stores in New York City which were purchased in November 2011. The remaining owners are not active in managing the franchise stores. (A list of Divine Store addresses is attached hereto as Exhibit A.)

11. Hiren Patel is also part owner of 27 other KFC franchise stores purchased in November 2013, operated under different corporate names, and located in Westchester County, Nassau County, and New York City (“Non-Divine stores”). (A list of Non-Divine Store addresses is attached hereto as Exhibit B.)

12. Divine’s business is the preparation and sale of KFC chicken and other quick-service KFC food and beverages to customers in New York City.

### **Practices Related to Payment of Wages**

13. The Attorney General’s investigation revealed that from November 2011 (when the Divine stores were purchased by the individuals referenced above) through approximately September 2014 (the “relevant period”), Divine assigned employees to work in more than one restaurant location, including Non-Divine stores, but did not combine all hours worked by employees at all work locations in determining whether those employees worked overtime.

When employees worked over 40 hours in multiple stores, but less than 40 in a single store, they were not paid overtime as required by NYLL and FLSA.

14. During the relevant period, certain employees performed work at the beginning or end of their shifts, but were not paid any wages for this work, in violation of the nonpayment provisions of New York Labor Law § 191 and the minimum wage provisions of the New York Labor Law, New York Labor Law § 652 and 12 N.Y.C.R.R. § 146. It also violated section 206 of the FLSA.

15. The investigation also revealed that during the relevant period, certain Divine employees working as cashiers were required to pay out-of-pocket for cash register shortages or counterfeit bills, in violation of NYLL § 193; 12 N.Y.C.R.R. §§ 146-2.7 and 29 U.S.C. §206

16. During the relevant period, Divine failed to comply with the Hospitality Wage Order for required uniforms because it did not (a) provide sufficient wash and wear uniforms to employees consistent with the average number of days per week worked by its employees, (b) launder any required employee uniforms, or (c) pay employees uniform maintenance pay as required by 12 N.Y.C.R.R. § 146-1.7. Most employees received only one uniform shirt in the years 2011, 2012, and 2013. Employees received up to three uniform shirts in 2014.

17. The investigation showed that during the relevant period, Divine failed to pay one additional hour of pay at the basic minimum hourly rate on each day when its employees' spread of hours exceeded ten. 12 N.Y.C.R.R. § 146-1.6.

18. During the relevant period, when employees with regularly scheduled shifts of over three hours were sent home after working fewer than three hours, those employees were not paid for at least three hours of "call-in pay" for the shift, as required by the Hospitality Wage Order. 12 N.Y.C.R.R. § 146-1.5.

19. The investigation revealed that during the relevant period Divine failed (a) to provide written notification to employees of their rate of pay, and (b) to obtain a written acknowledgment from employees of receipt of this notice.

20. From August 2013 to April 2014, Divine misclassified a cook as exempt, paying him a flat \$500 weekly to work up to 60 hours a week, in violation of FLSA § 13(a)(1); 29 CFR Part 541; 12 NYCRR 146-3.2(c)(1)(e)(1)-(3).

21. During the relevant period, Divine also paid certain managers as though they were exempt, when in fact they failed to meet the minimum salary threshold for the overtime exemptions to apply as required under 12 NYCRR 146-3.2(c)(1)(e)(1)-(3). In some cases, employees to whom Divine paid a “salary” were paid a varying amount based on hours or days worked, in violation of the law.

22. Based on the foregoing, the Attorney General has concluded that Divine engaged in a pattern and practice of conduct that violates, *inter alia*, Executive Law § 63(12); the Fair Labor Standards Act; New York State Labor Law; and New York Codes, Rules, and Regulations, as amended, Title 12, Chapter II, Subchapter B, Part 146.

### **PROSPECTIVE RELIEF**

WHEREAS, Executive Law § 63(12); the New York State Labor Law, as amended, Article 6 (Payment of Wages), §§ 190 *et seq.* and Article 19 (Minimum Wage Act), §§ 650 *et seq.*; New York Codes, Rules, and Regulations, as amended, Title 12, Chapter II, Subchapter B, Parts 146; and the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et seq.* (collectively “Wage and Hour Laws”), *inter alia*, (1) require the payment of minimum wage and overtime compensation; (2) require the payment of uniform maintenance unless certain

requirements are met; (3) prohibit unlawful deductions from employees' wages and require employers to reimburse employees for required expenses; (4) prohibit employers from directing employees to pay back cash register shortages as a condition of the job; (5) require employers to classify employees as exempt only if certain conditions are met including the minimum salary requirement, and (6) provide other rights to eligible employees and remedies for failure to comply therewith; and

WHEREAS, the Attorney General's investigation reveals that Divine has violated the aforementioned laws and regulations; and

WHEREAS, the Attorney General is willing to accept the terms of this Assurance pursuant to New York Executive Law § 63(15) and to discontinue his investigation of Divine; and

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

WHEREAS, Divine and its owners are represented by counsel, Diane Dabulas and Patrice Hew, Rogut McCarthy, LLC, 37 Alden Street, Cranford NJ 07016.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Divine and the Office of the Attorney General, as follows:

**Entities Bound By Assurance**

23. This Assurance binds, jointly and severally, (1) Divine Investors, LLC, its principals, directors, beneficial owners, officers, shareholders, successors, assigns, and "d/b/a" companies, and (2) all Divine stores owned wholly or in part by Hiren Patel in New York State (as listed in Exhibits A & B).

**Compliance with Wage and Hour Law and Other Laws Governing Employment Practices**

24. Divine hereby acknowledges that it understands and will comply with all applicable federal, state and local laws, including but not limited to the Fair Labor Standards Act; and New York Labor Law; New York Codes, Rules, and Regulations, Title 12. Specifically, Divine will:

- a. pay all employees for all hours worked, at a rate that meets or exceeds the minimum and overtime wages required by law, including any increases mandated by federal, state or municipal law. This requirement includes but is not limited to paying any legally mandated increases in the hourly wage for employees;
- b. pay all employees an additional hour of pay at the New York State minimum wage for days in which an employee's spread of hours exceeds ten (10) per day, pursuant to 12 N.Y.C.R.R. § 146-1.6;
- c. pay employees call-in pay as required by 12 N.Y.C.R.R. § 146-1.5;
- d. provide to all employees prior to the start of employment a written Notice of Pay Rates and Pay Day ("Notice") pursuant to 12 N.Y.C.R.R. 146-2.2, in English and any other language spoken by employees as their primary language, if the New York State Department of Labor provides such Notice in the language, setting forth each employee's regular hourly pay rate, overtime hourly pay rate, and the regular payday, and maintain an acknowledgment of receipt signed by the employee;
- e. comply with the Fair Labor Standards Act and New York Labor Law by providing full reimbursement to employees in the legally required timeframe for any employee payment of expenses necessary to perform job duties. Specifically, Divine



shall promptly reimburse employees for the cost of obtaining a food safety certificate, within 14 days of receiving proof of such expense.

f. comply with the Hospitality Wage Order for required uniforms by laundering any required employee uniforms or by paying employees uniform maintenance pay as set by law (currently \$10.90 per week for employees working over 30 hours per week). However, if such uniforms are wash and wear, Divine need not launder uniforms or pay employees so long as Divine furnishes uniforms to employees consistent with the average number of days per week worked by the employee;

g. classify employees as exempt under the executive, administrative, or professional employees only if they meet specific requirements such that they can properly classified as exempt, including a minimum weekly salary set by law (currently \$656.25 per week beginning December 31, 2014 and \$675 per week as of December 31, 2015. FLSA § 13(a)(1); 29 CFR Part 541; 12 NYCRR 146-3.2(c)(1)(e)(1)-(3).

h. comply with the New York City Earned Sick Time Act with regard to employees in New York City. New York City Administrative Code §§ 20-911 to 20-924.

### **Retaliation**

25. Divine agrees that it shall comply with New York Labor Law § 215 and shall not in any manner discriminate or retaliate against any of its employees, including but not limited to employees who cooperated or are perceived to have cooperated with the Attorney General's investigation of this matter. Divine agrees not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the Attorney General's investigation or to any past, present or future participation in

any activities involving the exercise of their legal rights under the Fair Labor Standards Act, the New York State Labor Law, and New York Codes, Rules, and Regulations.

**Complaint Procedures**

26. Divine agrees that within thirty (30) days of the full execution of this Assurance (“the effective date”), Divine shall create and implement procedures, subject to the Attorney General’s approval, (a) for (i) employees of Divine, and (ii) employees employed at Non-Divine Stores (“Non-Divine employees”) to complain to Denise Springer, Regional Manager of Divine (or a successor to Ms. Springer, to be approved by the Attorney General, should Ms. Springer leave the employment of Divine) regarding violations of this Assurance of Discontinuance, including potential New York Labor Law violations in their employment; and (b) for the investigation and resolution of any complaints regarding pay practices, including but not limited to complaints alleging violations of this Assurance and/or any legal requirements referenced in this Assurance. Divine agrees to maintain a written log of these complaints, whether formal or informal, by employees or their representatives. The written log shall include a written record of at least the following information: (a) name of the complainant; (b) nature of the complaint; (c) person to whom the complaint was made; (d) date of complaint, (e) nature of the investigation into the complaint; (f) resolution of the complaint; (g) date of the resolution of the complaint; and (h) the date the resolution was communicated to the complainant. Divine agrees to maintain these records for a period of at least two (2) years after the Assurance is executed (“the effective period”) and to produce such documents to the Attorney General on the first day of each calendar quarter during this two (2) year period.

### **Written Handbook for Employees**

27. Divine agrees to submit a handbook (“Handbook”) to the Attorney General within forty-five (45) days of the effective date of this Assurance, subject to the prior approval of the Attorney General, which shall not be unreasonably withheld. The Handbook shall summarize in simple and accessible language the requirements set forth in paragraphs 24 through 26 of this Assurance and employees’ rights under New York Labor Law and other relevant state, federal, and local statutes, including but not limited to minimum wage and overtime rights, and the right to be paid for all hours worked, the right to reimbursement for necessary work expenses, and the right to earned sick time. The Handbook shall be in English and any other language predominantly spoken by employees of Divine. Employees will be given at least fifteen minutes of paid work time to review this Handbook, which may be in the form of paid training, and shall sign acknowledgment forms that they have received and understand the Handbook. The Handbook shall be distributed to all Divine and non-Divine employees already employed within fifteen (15) days of the Attorney General’s approval of the Handbook and to the newly employed on their first work day.

### **Supervisor Training**

28. Within thirty (30) days of the effective date, Divine agrees to train all of its supervisory personnel currently employed at Divine (“Divine supervisors”) or at Non-Divine stores (“Non-Divine supervisors”) on the requirements of the policies described in paragraphs 24 through 27 of this Assurance and the applicable laws. Divine agrees to train all newly-hired or newly-promoted Divine supervisors and Non-Divine supervisors within ten (10) days from their start date of employment on the same topics.

**Posting**

29. Divine agrees to post all notices for Divine and Non-Divine employees as required by law, including those setting forth employee rights with respect to wage and hour laws and the right to be free from retaliation. In addition, Divine agrees to post a copy of the notice attached hereto as Exhibit C in each Divine and Non-Divine location, setting forth employee rights with respect to this Assurance in conspicuous areas, and to keep such notice posted for the effective period.

**Recordkeeping**

30. Divine agrees to create and maintain all employment documents as defined by this Assurance for the effective period, and Divine further agree to comply with the six (6) year recordkeeping requirements as set forth in New York Labor Law and 12 N.Y.C.R.R. Part 146. As defined by this Assurance, “employment documents” means all documents used and maintained by Divine with respect to the employment of individuals by Divine within the State of New York, including (a) all documents employees must review and/or complete in order to be employed at Divine and Non-Divine stores, including but not limited to required notices, employee manuals and acknowledgements of receipt thereof; (b) documents created by Divine related to employment practices, including but not limited to payroll records, revenue and expense reports, time records, weekly schedules, records of reimbursed employee expenses, notices provided to employees regarding paid sick leave, records showing accrual and use of paid sick leave, tax documents, including but not limited to New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns, and proof of purchase of workers' compensation and disability insurance for all employees; and (c) information concerning employee complaints

regarding pay practices, including but not limited to the complaint log and any underlying documents relating to the complaint log.

**Ongoing Cooperation**

31. Divine agrees to cooperate with all ongoing requests by the Attorney General for information related to this investigation, including but not limited to any inquiries regarding Divine and Non-Divine stores and to ensure compliance with this Assurance. During the effective period, Divine agrees that the Attorney General shall have full access to the contact information of its employees in order to reach them through by mail, telephone, or electronic means. Divine agrees to inform its employees about this method and encourage its employees to cooperate with the Attorney General fully.

**Compliance Officers**

32. Within thirty (30) days of the effective date, Divine agrees to designate one or two employees or agents, at least one of whom must have human resources experience and familiarity with the Assurance and the laws referenced in this Assurance, including but not limited to the New York Labor Law, the Hospitality Wage Order and the Fair Labor Standards Act, as the “Compliance Officer.” This designation is subject to the prior approval of the Attorney General. At least one of the Compliance Officers must have managerial responsibility over Divine's current establishment and report directly to Hiren Patel. Should there be additional future establishments, the Compliance Officer(s) must also have managerial responsibility over them.

33. Divine agrees that the Compliance Officers will be responsible for implementing all requirements referenced in paragraphs 24 through 35, including but not limited to: (a) designing and conducting the trainings in accordance with paragraph 28, instituting and

implementing complaint procedures in accordance with paragraph 26, and ensuring that all postings are appropriately placed in conspicuous areas in all workplaces in accordance with paragraph 29 and updated as needed; and (b) obtaining and maintaining all acknowledgments, and creating and maintaining all required records and providing the same to the Attorney General.

34. Within fifteen (15) days of approval by the Attorney General of such designation of the Compliance Officers, Divine agrees that they shall provide a written description of the Compliance Officers' job responsibilities to the Compliance Officers, subject to approval of the Attorney General, and the Compliance Officers shall sign a written certification that he or she has read and understands the Assurance and his or her job responsibilities as they relate to the Assurance, including but not limited to (a) drafting, reviewing and updating all relevant documents, including but not limited to employee payroll records, notices for employees, Notice acknowledgment forms and complaint records, and weekly revenue records, and (b) upon receipt of a complaint of a violation of the Assurance, conducting confidential interviews with employees outside of the presence of other employees, managers, or owners.

35. On the first day of each calendar quarter beginning July 1, 2015 and ending two (2) years after the effective date, the Compliance Officers shall prepare and submit to the Attorney General, a report describing compliance at the Divine and Non-Divine stores with the terms of this Assurance. The Compliance Officers' report shall include, *inter alia*:

- a. an executive summary describing the steps taken to comply with this Assurance, and any violations and efforts to cure such violations identified by the Compliance Officers during the calendar quarter;
- b. a description of all documents prepared and reviewed by the Compliance

Officers;

- c. copies of all documents created during the calendar quarter concerning compliance with the Assurance, including but not limited to all employment documents as defined by this Assurance;
- d. signed certifications from the Compliance Officers that the payroll records attached to the report are true and correct copies of all original payroll records created during the calendar quarter, and that he or she personally reviewed such records and found them to be accurate, contemporaneous statements of the hours worked by and wages paid to all Divine and Non-Divine employees; and
- e. identification of specific actions or internal policies or procedures that the Compliance Officers determine are necessary to take or adopt in order to comply and assure its ongoing compliance with this Assurance; the FLSA; NYLL; N.Y.C.R.R.; other federal, state, and local laws; and any other law referred to in this Assurance.

**Penalty for Non-Compliance**

36. If an Attorney General inspection and/or a Compliance Officers' examination or report shows a material violation of paragraphs 24 through 30 of this Assurance at a Divine or Non-Divine store, Divine agrees to pay \$5,000 in liquidated damages for each violation per day for each day the violation remains uncured, separate and apart from any other penalty or damages associated with the violation, provided that prior to any assessment of liquidated damages, Divine shall be notified of the violation in writing, effective two days after mailing via first class mail, after which Divine shall have fifteen (15) days to cure the violation.

### **Monetary Payment**

37. Divine agrees to pay Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) (“the Settlement Funds”) in resolution of the Attorney General’s investigation, which will be paid directly to the Office of the Attorney General and will be used for distribution as restitution to current or former employees of Divine or Non-Divine stores. Divine agrees to pay the Settlement Funds as follows:

- a. \$125,000 at the signing of this Assurance, and
- b. \$62,500 on or before July 15, 2015
- c. \$62,500 on or before October 15, 2015
- d. \$62,500 on or before January 15, 2016, and
- e. \$62,500 on or before April 15, 2016.

38. All payments from Divine to the Office of the Attorney General must be in the form of a certified check, bank check, money order, or attorney’s check made payable to “The New York State Department of Law,” and forwarded to the New York State Attorney General’s Office to the attention of Donya Fernandez, Assistant Attorney General, Labor Bureau, 120 Broadway, 26<sup>th</sup> Floor, New York, New York, 10271-0332. The payment and all correspondence related to this Assurance must reference “Assurance # 15-092.”

39. In the event that a payment is missed, the Attorney General may demand from Divine an acceleration of all of the rest of the payments that would still be due and owing after giving Divine fifteen (15) days of notice of the missed payment. Moreover, the Attorney General may immediately file the Confessions of Judgment as described in paragraph 42 and attached hereto as Exhibit D.



40. The Attorney General has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. Divine agrees to provide reasonable cooperation necessary to locate current and former employees who may be eligible for restitution.

**Individual Liability**

41. Hiren Patel hereby expressly and unequivocally agrees to assume all personal and individual liability for any of the restitution and damages concerning the payment of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) of the Settlement Funds as stated in paragraph 37 of this Assurance. Hiren Patel waives any defense or argument that he is not subject to the jurisdiction of New York courts. By signing this Assurance, Hiren Patel hereby admits his understanding of the term “personal and individual liability” and agrees to be subject to any and all collection remedies available against an individual under the Civil Practice Law and Rules of the State of New York, including, but not limited to, seizure of personal assets, including property, and garnishment of wages.

**Confession of Judgment**

42. Hiren Patel agrees to execute an Affidavit of Confession of Judgment (“Confession of Judgment”) (attached hereto as Exhibit D) in the sum of Three Hundred Thousand Dollars (\$300,000) upon the signing of this Assurance. The Confession of Judgment shall be held in escrow by the Attorney General and may only be filed if Divine does not comply with its obligations as set forth in paragraph 37 of this Assurance. If the Confession of Judgment is filed, the amount of any payments in excess of \$125,000 already made will be subtracted from the \$300,000 amount.

### **Miscellaneous**

43. The Office has agreed to the terms of this Assurance based on, among other things, the representations made to Office by Hiren Patel, Divine, LLC, and Divine's counsel and Office's own factual investigation as set forth in the Findings described in paragraphs 8 through 16 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in his sole discretion.

44. This Assurance will expire two (2) years after the effective date, except that the Attorney General may, in its sole discretion, extend the Assurance term to three (3) years upon a determination that Divine has not complied with this Assurance, which non-compliance the Attorney General will discuss and attempt to resolve with Divine in good faith before making such determination.

45. If the Assurance is voided or breached, Divine agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, Divine expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Assurance, against Divine, or from using in any way statements, documents, or other materials produced or provided by Divine prior to or after the date of this Assurance.

46. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Divine in agreeing to this Assurance.

47. Divine represents and warrants, through the signatures below, that the terms and

conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Divine and its agents or employees agree not to take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Hiren Patel or Divine's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party. This Assurance is not intended for use by any third party in any other proceeding.

48. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

49. Divine neither admits nor denies the Attorney General's Findings set forth in paragraphs 13 through 22 herein.

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

51. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the Attorney General such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

52. To the extent not already provided under this Assurance, Hiren Patel and Divine agree upon request by the Attorney General, to provide all documentation and information necessary for the Attorney General to verify compliance with this Assurance at Divine and Non-Divine stores.

53. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From Hiren Patel and Divine to the Attorney General:

New York State Office of the Attorney General, Donya Fernandez, Assistant Attorney General, Labor Bureau, 120 Broadway, 26<sup>th</sup> Floor, New York, New York 10271-0332 or donya.fernandez@ag.ny.gov.

From the Attorney General to Hiren Patel and Divine:

Patrice Hew, Rogut McCarthy, LLC, 37 Alden Street, Cranford NJ 07016.  
peh@rogutmccarthy.com

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

54. Acceptance of this Assurance by the Office shall not be deemed approval by the Office of any of the practices or procedures referenced herein, and Hiren Patel and Divine agree not to make any representation to the contrary.

55. Pursuant to Executive Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by this Office.

56. If a court of competent jurisdiction determines that Hiren Patel or Divine have breached this Assurance, Divine agree to pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

57. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. The Attorney General is willing to accept this Assurance


pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

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

59. This Assurance 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.


IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on April 30 2015.

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

By:   
~~DONYA FERNANDEZ~~ PATRICIA KAVALEC  
~~Assistant Attorney General~~ Special Counsel  
Labor Bureau  
120 Broadway, 26<sup>th</sup> Floor  
New York, New York 10271  
Phone: (212) 416-6599  
Fax: (212) 416-8694

Dated: April 30, 2015

**Divine Investors LLC**

By:   
**HIREN PATEL**  
In His Own Individual Capacity  
271 Ashley Place  
Paramus, NJ 07652  
Cell Phone: (973) 342-1421  
Dated: April \_\_, 2015

By:   
**HIREN PATEL**  
Managing Officer  
Divine Investors, LLC  
24 Outwater Lane  
Garfield NJ. 07026  
Phone: (877) 694-4474  
Dated: April \_\_, 2015

## NOTICE TO ALL EMPLOYEES OF KFC STORES OWNED BY HIREN PATEL

This notice is posted and provided as part of a settlement agreement between the New York State Attorney General's Office, Hiren Patel, and Divine Investors, LLC, as the result of an investigation by the Attorney General.

You have legal protections in the workplace, which may change over time. This notice states some of your relevant, current rights:

- Minimum Wage:** You must be paid at least the minimum wage, which is \$8.75 per hour in NY in 2015 and increases to \$9.00 per hour in NY in 2016.
- Overtime:** You must be paid overtime at a rate of at least 1 ½ times your regular hourly rate for every hour that you work over 40 hours in a single work week at any KFC store owned by Hiren Patel. Hours worked at different locations of the same business must be combined in calculating overtime pay.
- Spread of Hours:** You also have a right to be paid an additional hour at the minimum wage each day that the amount of time between the start and end of your work day is more than 10 hours.
- Unlawful Deductions:** Your employer cannot require you to pay for cash register shortages or counterfeit bills.
- Call-In Pay:** If you report for your regular shift and are prepared to work you must be paid "call-in pay" for at least three hours for one shift, or the number of hours in the regularly scheduled shift, whichever is shorter.
- Uniforms:** Your employer may require you to wear a uniform but your employer may not charge you for the uniform or deduct the cost of the uniform from your paycheck. Your employer must also provide laundry services for free or pay you uniform maintenance pay of an amount set by law, depending on your weekly hours. This amount is currently \$10.90 per week for employees working over 30 hours per week, with lower requirements for shorter work schedules. If your uniform is "wash and wear," meaning that the uniform can be routinely washed and dried with your personal clothes, no uniform maintenance pay is required if the employer provides you with a sufficient number of uniforms, consistent with the average number of days per week that you regularly work.
- Pay Notice:** When hired, your employer must provide you with a written notification in your primary language of your rate of pay, and provide you every pay period with a pay record with all payments reflecting gross payments, deductions, and net payments.
- Paid Sick Time:** If you work in New York City, you have the right to earn paid sick time under the New York City Earned Sick Time Act. Both full-time and part-time workers earn one hour of sick time for every 30 hours worked but you must work for at least 120 days before you are able to use the time. Sick time can be used to care for your own health needs or to care for the health needs of your spouse, domestic partner, child, parent, grandchild, grandparent, sibling, or the child or parent of your spouse or domestic partner.
- No Retaliation:** You have the right not to be punished or retaliated against because you have complained about unlawful pay practices, to your employer or to a government agency like the Attorney General's Office.

Hiren Patel and Divine Investors LLC have agreed to comply with all laws guaranteeing minimum and overtime wages. They may not retaliate against any person who complains of violations of these laws.

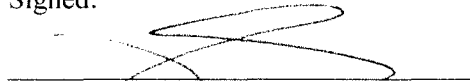
**If you have any complaint regarding violations of the above laws, please contact:**

- New York State Attorney General's Office, Labor Bureau, 120 Broadway, 26<sup>th</sup> floor, New York, New York 10271, Telephone: (212) 416-8700, Fax: (212) 416-8694, [www.ag.ny.gov](http://www.ag.ny.gov), email [labor.bureau@ag.ny.gov](mailto:labor.bureau@ag.ny.gov)
- Denise Springer, Regional Manager, (917) 796-5620.

**THIS IS AN OFFICIAL NOTICE**

This Official Notice must remain posted for two years from the date of posting and may not be altered, defaced or covered by any other material, until April \_\_, 2017.

Signed:



**HIREN PATEL**

Owner

Dated: April 15, 2015