

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the State of New York (the “State”), (ii) the parties to the action filed by relator Nishith Kumar (“Relator”) in the Supreme Court of the State of New York, New York County, Index No. 101080/2018 (the “Action”); and (iii) Tripmama Inc. (“Tripmama,” together with the named defendants in the Action, the “Settling Parties”). The above-named persons and entities are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about August 1, 2018, Relator filed the Action under the *qui tam* provisions of the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* (“NYFCA”); and

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

WHEREAS, the Settling Parties cooperated fully with the State’s investigation; and

WHEREAS, as a result of that investigation, the State contends that it has civil claims against the Settling Companies (as separately defined below in paragraph 3) under the NYFCA; and

WHEREAS, this Agreement is made in compromise of disputed claims of the Relator and the State and is neither an admission of liability or wrongdoing by any of the Settling Parties nor a concession by the State that its claims are not well founded; and

WHEREAS, the Settling Parties have agreed to this Agreement in settlement of the violations alleged below and to avoid the time, expense, and distraction of litigation, and the Office of the Attorney General has agreed to accept the terms of the Agreement; and

WHEREAS, Relator claims entitlement under N.Y. State Finance Law § 190(6) to a share of the proceeds of the settlement memorialized herein, and to Relator's reasonable expenses, attorney's fees and costs;

NOW THEREFORE, in consideration of the mutual promises and obligation of the Parties hereunder including the above acknowledgements, the Parties agree fully and finally to settle the Action on the Terms and Conditions below:

STATE'S FINDINGS

1. Under Article 9-A of the New York Tax Law, a corporation's taxable income is "presumably the same as the entire taxable income, which . . . (i) the taxpayer is required to report to the United States treasury department." N.Y. Tax Law § 208(9)(i). Thus, any deductions from corporate income taken by a corporation on its federal tax returns are necessarily reflected in its taxable income reported to the State.

2. Under section 162(a) of the Internal Revenue Code and the regulations promulgated thereunder, expenses constituting reasonable compensation for personal services are deductible from a corporation's gross income, provided that "they are reasonable and are in fact payments purely for services." 26 C.F.R. § 1.162-7(a). Payments of dividends to corporate shareholders are not deductible by the corporation.

3. In this case, between 2007 and 2012, Fareportal Inc., WK Travel Inc., Jen NY Inc., and Tripmama (collectively referred to herein as the "Settling Companies") – an affiliated group of online travel companies owned and controlled by a single individual (the "Shareholder") – deducted from their corporate income tens of millions of dollars in payments made to Magic Travel LLC, a New York limited liability company 99% of which was also

owned by the Shareholder. These payments, while denominated as “management fees” for the Shareholder’s services to the Settling Companies, in reality constituted dividends to the Shareholder and should have been included in the Fareportal Companies’ taxable income. The Settling Companies deducted the management fees as expenses notwithstanding concerns raised by independent advisors that the fees were excessive in amount and could be reclassified by the IRS as dividends.

4. The management fee mechanism was conceived in 2007 by the external accounting firm (“Accounting Firm A”) who filed the Shareholder’s personal tax returns, who suggested it as a way for Fareportal to lower its tax obligations by creating corporate tax deductions, while increasing tax liabilities of Magic Travel. Based on that suggestion, it was decided that the Settling Companies would pay management fees to Magic Travel, an entity that held the Shareholder’s personal investments and had no employees. Under this arrangement, Fareportal in 2007 paid Magic Travel approximately \$5 million in management fees and later deducted approximately \$1.7 million of that amount as an expense on its 2007 federal tax return, filed in September 2008.

5. During 2008, Fareportal and Jen NY collectively paid Magic Travel approximately \$8.35 million in management fees. Early that year, Fareportal’s Chief Financial Officer (the “CFO”) acknowledged that the fees were distributions of corporate profits, writing to a prospective employee who had inquired about a profit-sharing plan that “Fareportal is a privately held company. As such we distribute most of the profits out as management fees to the owners of the company.” Nevertheless, on their 2008 federal tax returns, filed in September

2009, Fareportal and Jen NY deducted as expenses the management fees paid to Magic Travel in 2008.

6. In 2009, Fareportal, Jen NY and WK Travel collectively paid Magic Travel more than \$24 million in management fees. They later deducted those fees as expenses on their 2009 federal tax returns, filed in September 2010.

7. Starting in 2010 and continuing through 2011, Fareportal conducted discussions with a private equity firm (the “Potential Purchaser”) for a potential deal in which the Potential Purchaser would acquire a majority stake in the Settling Companies. Around the same time, the Settling Companies retained a law firm (“Law Firm A”) to prepare “Management Service Agreements” (“MSAs”) between the Settling Companies and Magic Travel. The MSAs prepared by Law Firm A provided generally for the payment to Magic Travel of a \$50,000 “monthly management services fee” as well as “per booking” fees to be based on the number of tickets booked through the Settling Companies’ websites, with “the specifics of the measurement of the bookings” left to be decided by the management team of the Settling Companies. As later described by Accounting Firm A, the fees established under the MSAs “were effectively ‘backed into’” based on the amount of management fees the Settling Companies had paid Magic Travel earlier that year, before the MSAs were prepared. Law Firm A did not provide to the Settling Companies an opinion as to whether the amount of management fees actually paid to Magic Travel constituted reasonable compensation for the Shareholder’s services, or whether the fees were deductible under IRC § 162.

8. Ultimately, the Settling Companies in 2010 paid Magic Travel a combined total of approximately \$32.8 million in management fees. This amount comprised not only the fees

provided for under the MSAs but also additional fees billed by Magic Travel at year end, to further reduce the Settling Companies' taxable income. In November 2010, Accounting Firm A asked the Settling Companies' outside accountant to "please estimate what the year-end profits and retained earnings will be, advise [the Shareholder] and then determine the level of management fees that Magic Travel can bill." Subsequently, between November and December 2010, Magic Travel billed the Settling Companies for, and was paid, an additional \$2.98 million over and above what was provided for by the MSAs.

9. During 2011, the Settling Companies continued to make payments to Magic Travel for the express purpose of reducing corporate profits and lowering their taxable income. In March 2011, Accounting Firm A advised the Settling Companies' accountant that the allocation of cash distributions to the Shareholder as between management fees and dividends should be done "with an eye towards lowering taxable income to a nominal amount and then the remainder as dividends," and that the "mix" between dividends and management fees would "depend on . . . what needs to be management invoic[ed] out to lower the corp[or]ate income (and correspondingly lower the corporate taxes)." In November 2011, Accounting Firm A reported to the Shareholder on discussions with the Settling Companies' outside accountant "to determine if there will be the need to provide for [additional management fee] payments prior to December 31st to lower any corporate profit that will create a tax liability." In December 2011, after a meeting among Accounting Firm A, the Settling Companies' outside accountant and the CFO, Accounting Firm A created a spreadsheet showing the "Total management fees that [the Companies' accountant] needs to bring down the corporate tax liability."

10. Also in 2011, independent consultants identified the Settling Companies' payment of management fees to Magic Travel as a potential tax liability. In or about March 2011, approximately six months before the Settling Companies were due to file their 2010 tax returns, a "Big 4" accounting firm ("Accounting Firm B") conducting due diligence on behalf of the Potential Purchaser stated in a report that "since [the Shareholder] controls both the C-corporation businesses and the LLC receiving the management fee, the taxing authority could reclass some or all of the management fee as some form of nondeductible dividend distribution. This could result in corporate income tax exposure." The Settling Companies were advised of this opinion. The Settling Companies' own advisors, including a different "Big 4" accounting firm ("Accounting Firm C"), also considered the possibility that the management fees could be reclassified as dividends, estimating a potential multi-million dollar tax liability if the fees were added back to the Settling Companies' taxable income.

11. Notwithstanding the potential tax liability identified by both Accounting Firm B and Accounting Firm C, the Settling Companies paid Magic Travel a total of approximately \$41.4 million in management fees during 2011. In addition, on their 2010 federal tax returns filed in September 2011, the Settling Companies deducted as expenses the full \$32.8 million in management fees paid to Magic Travel during 2010.

12. During 2012, the Settling Companies paid Magic Travel a total of approximately \$36.7 million in management fees. In addition, on their 2011 federal tax returns filed in September 2012, the Settling Companies deducted as expenses the full \$41.4 million in management fees paid to Magic Travel during 2011.

13. During 2012 and 2013, Accounting Firm C performed an audit of the Settling Companies' FY2011 financial statements. In that context, Accounting Firm C raised a concern in December 2012 about whether the management fee deductions were permissible under IRS rules and suggested that the Settling Companies consult with Accounting Firm B, which had previously identified the management fees as a potential tax liability.

14. Thereafter, in early 2013, Fareportal retained Accounting Firm B "to review whether the fees were consistent with arm's length pricing arrangements and to review whether the intercompany payments were between appropriate entities within the group." Accounting Firm B then conducted a "CEO Compensation Analysis" comparing the management fees paid to Magic Travel – approximately \$41.4 million in 2011 – to the compensation paid to the CEOs of 13 peer companies, and also a "Comparable Profits Method analysis" comparing Fareportal's operating profits to those earned by comparable companies. Based on those analyses, Accounting Firm B advised Fareportal in August 2013 that Magic Travel "should have received fees from the [Settling Companies] of between \$1.41 million to \$3.54 million in FY2011," and that fees in that range "represent the appropriate compensation for executive management services provided Magic Travel." Shortly thereafter, Accounting Firm C, in its "comment letter" to the Settling Companies' management concerning the results of the 2011 audit, identified as a "material weakness" that "[m]anagement fees were incorrectly classified in operating expenses when it should have been classified in Retained Earnings as a Distribution to Owners."

15. Notwithstanding the results of the analyses conducted by Accounting Firm B, and the material weakness identified by Accounting Firm C during its audit, the Settling Companies,

on their 2012 federal tax returns filed in September 2013, deducted as expenses the full \$36.7 million in management fees paid to Magic Travel in 2012.

16. Also in 2013, the IRS conducted an audit of Fareportal's 2010 and 2011 federal tax returns. During the audit, the IRS's auditor requested and received information from Fareportal concerning its management fee expense deductions for 2010 and 2011. At the conclusion of the audit, in or about May 2013, the auditor found that the management fees paid to Magic Travel in 2010 and 2011 were deductible as business expenses under IRC § 162. In an internal summary of the management fee issue, the auditor wrote that the management fees paid to Magic Travel "were for services rendered by independent contractors," even though the services rendered in the name of Magic Travel were performed by the Shareholder of the Settling Companies.

17. In sum, the management fees paid by the Settling Companies to Magic Travel did not constitute reasonable compensation for the Shareholder's services to the Settling Companies and instead constituted nondeductible dividends to the Shareholder of the Settling Companies. By deducting the management fees from their taxable income notwithstanding, *inter alia*, their CFO's acknowledgment that the fees were distributions of profits, their awareness that the purpose of the fees was to reduce corporate taxes, and their knowledge of the potential tax liability identified by Accounting Firms B and C, the Settling Companies violated the NYFCA.

18. The conduct described in the foregoing paragraphs 1 through 17 is hereinafter referred to as the "Covered Conduct."

TERMS AND CONDITIONS

Settlement Amount

19. The Settling Parties collectively will pay the sum of four million, five hundred thousand (\$4,500,000.00) in U.S. dollars (the “Settlement Amount”) to resolve the Action, the Office of the Attorney General’s investigation, and claims that are the subject of separate closing agreements (“Closing Agreements”) between certain Settling Parties and the New York State Department of Finance (“DTF”). The Settlement Amount is being paid in compromise of the damages sought by the State for alleged violations of the NYFCA, representing in part unpaid tax and interest under the New York Tax Law; Relator’s share, *i.e.*, the share to which Relator is entitled under N.Y. State Finance Law § 190(6); and the State’s attorney’s fees and costs. Each Settling Party is independently responsible for paying the Settlement Amount until it is fully paid.

20. The Settlement Amount is divided into two portions: a portion paid to the State (“State’s Share”), and a portion paid to Relator (“Relator’s Share”). Relator’s Share is the portion to which Relator is entitled under N.Y. State Finance Law § 190(6).

21. Within ten (10) calendar days of the Effective Date (defined in paragraph 52 below) of this Agreement, the Settling Parties agree to pay the State’s Share of the Settlement Amount in the sum of \$3,465,000 in U.S. dollars. Such payment shall be made by wire transfer pursuant to instructions provided by the Office of the Attorney General.

22. In addition, within ten (10) calendar days of the Effective Date, the Settling Parties agree to pay the Relator’s Share of the Settlement Amount in the sum of \$1,035,000 in U.S. dollars. Such payment shall be made through electronic transfer to a trust account for

Relator, through his counsel, in accordance with written instructions to be provided by his counsel.

23. The Settling Parties agree that they will not claim, assert or apply for a tax deduction or tax credit on any New York State or New York City tax return, for any portion of the amount due under this Agreement or the Closing Agreements.

24. The Settling Parties acknowledge that, pursuant to I.R.C. § 162(f) and the regulations promulgated thereunder: (a) \$573,238 of the State's Share constitutes payment in relation to an investigation or inquiry into a potential violation of law; (b) no part of the State's Share constitutes restitution; (c) no part of the State's Share constitutes payment to come into compliance with law; and (d) \$2,891,762 of the State's Share represents amounts paid or incurred as taxes due. Defendant agrees to provide the State, within thirty (30) days of the Agreement's Effective Date, with the name, address, and taxpayer identification number of the payor of the State's Share.

25. In consideration of the obligations of the Settling Parties as set forth in this Agreement, Relator and the State, and conditioned upon the full payment by the Settling Parties of the Settlement Amount, the State, within fifteen (15) days after the Effective Date, shall file a Notice of Discontinuance of the Action, with prejudice, pursuant to CPLR 3217(a).

Releases

26. Subject to the exceptions in the next paragraph, in consideration of the obligations of the Settling Parties set forth in this Agreement, conditioned upon the full payment by the Settling Parties of the Settlement Amount and subject to paragraph 35 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this

Agreement or any payment to the State under this Agreement, whichever is later), the State fully and finally releases the Settling Parties and their respective officers, directors, shareholders, members, subsidiaries, successors and assigns from any civil or administrative monetary claim the State has or may have for the Covered Conduct or arising from the Complaint in the Action under the NYFCA.

27. This Agreement specifically does not release any person or entity from any of the following:

- a) Any civil, criminal or administrative liability arising under state or municipal tax laws;
- b) Any criminal liability;
- c) Any civil liability that the Settling Parties 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 or arising from the Complaint in the Action under the NYFCA;
- 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.

28. Nothing herein affects the obligations or duties of the Settling Parties under the Closing Agreements contemporaneously executed with DTF, or the rights of DTF under those Closing Agreements.

29. In consideration of the obligations of the Settling Parties in this Agreement, conditioned upon the full payment by the Settling Parties of the Settlement Amount, Relator, for himself, and for his heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the Settling Parties and their respective officers, directors, shareholders, members, subsidiaries, successors and assigns from any civil monetary claim Relator has on behalf of the State or any local government within the State for the Covered Conduct and arising from the Complaint in the Action under the NYFCA; provided, however, that nothing in this Agreement shall preclude Relator from seeking to recover Relator's expenses or attorney's fees and costs from the Settling Parties pursuant to N.Y. State Finance Law § 190, or from seeking redress pursuant to N.Y. State Finance Law § 191, or (for the avoidance of doubt) any remedies in connection with the lawsuits that Fareportal has brought against Relator.

30. The Settling Parties, 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 the Settling Parties 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/or the State's investigation and prosecution thereof.

31. The Settling Parties, for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally release Relator, Relator's heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns from, and covenant not to sue any of them with respect to, any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that the Settling Parties have asserted, could have asserted, or may assert in the future against the Relator, Relator's heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct and/or Relator's and the State's investigations and prosecution concerning the Action.

32. Relator, for himself individually, and for Relator's 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, and covenant not to sue any of them with respect to, 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 claims against the Settling Parties or from any other claim for a share of the settlement proceeds. Relator accepts the payment described in Paragraph 22 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.

33. Relator, and each of his 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).

34. 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 the Settling Parties 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 the Parties in agreeing to this Agreement. The Parties represent that they have entered into this Agreement freely and voluntarily entered and upon due deliberation with the advice of counsel.

Bankruptcy and Non-Payment

35. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, any of the Settling Parties 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 Settling Parties as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for any of the Settling Parties or for all or any substantial part of its or their assets, the Settling Parties agree as follows:

- a) The Settling Parties' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and the Settling Parties shall not argue or otherwise

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

b) If any of the Settling Parties' 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 the Settling Parties for the claims that would otherwise be covered by the releases provided above, and the Settling Parties 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 the Settling Parties 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 the Settling Parties 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 the Settling Parties in the amount of treble damages plus penalties under the NYFCA, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c) The Settling Parties acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

36. In the event of the failure by the Settling Parties to make any or all payments of the Settlement Amount when due according to Paragraphs 21 and 22, including the State's Share and the Relator's Share, the State will provide written notice of the non-payment ("Default") to the Settling Parties. Such notice shall be given to the person and address designated in Paragraph 46 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. The Settling Parties shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If the Settling Parties 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 Default, the State, in its sole discretion, may declare or do any or all of the following:

a) 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 the Settling Parties and pursue all available remedies to enforce this Agreement. In the event of a Default as described above, the Settling Parties agree not to contest any action to enforce this Agreement or any other collection action undertaken by the State pursuant to this Paragraph, and the Settling Parties 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 the Settling Parties and reinstitute an action or actions against the Settling Parties in this Court. In the event the State reinstates this action, the Settling Parties: (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 the Settling Parties that this Agreement has been rescinded, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses the Settling Parties may have to any civil or administrative action relating to the Covered Conduct.

37. In the event of the failure by the Settling Parties to make payment of the Relator's Share when due according to Paragraph 22, the Relator will provide written notice of the non-payment ("Relator's Share Default") to the Settling Parties. Such notice shall be given to the

person and address designated in Paragraph 46 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. The Settling Parties shall have an opportunity to pay the unpaid balance within five (5) calendar days from the effective date of the notice. If the Settling Parties 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 Relator's Share Default, the Relator, in his sole discretion, may declare or do any or all of the following:

- a) Declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or
- b) Institute an action or actions against the Settling Parties in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. The Settling Parties agree not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and the Settling Parties agree to pay the Relator all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

Additional Terms

38. The Settling Parties represent and warrant that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement by the Settling Parties' counsel Mayer Brown LLP is duly authorized.

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

40. Except as provided in Paragraphs 36 and 37 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

41. The signatories to this Agreement represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

42. 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.

43. 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.

44. 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.

45. Any failure by the State to insist upon the strict performance by the Settling Parties 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 the Settling Parties 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 Settling Parties.

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

If to the State of New York: Susan Jacquemot
Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
120 Broadway, 22nd Floor
New York, NY 10271
(212) 416-8030

If to Relator: Randall M. Fox
Kirby McInerney LLP
825 Third Avenue, 16th Floor
New York, NY 10022
(212) 371-6600

- and -

Rachel Geman
Lief, Cabraser, Heimann & Bernstein, LLP
250 Hudson Street
New York, NY 10013
(212) 355-9500

If to the Settling Parties:

Matthew D. Ingber
Mayer Brown LLP
1221 Avenue of the Americas
New York, NY 10020
(212) 506-2373

47. Except for written notices of the Settling Parties' Default and/or Relator's Share Default issued by the State or Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 36 and 37 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.

48. In any subsequent investigation, civil action, or proceeding by the State to enforce this Agreement, or for violations of the Agreement, the Settling Parties expressly agree and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the Effective Date (defined below) of this Agreement, and that the State may use statements, documents or other materials produced or provided by the Settling Parties prior to or after the Effective Date (defined below) of this Agreement.

49. If a court of competent jurisdiction determines that the Settling Parties have breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described in Paragraphs 36 and 37, the Settling Parties shall pay to the Office of the Attorney General 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.

50. 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.

51. 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, and all Settling Parties agree that they will submit to the personal jurisdiction of that Court for such purposes, without regard to their present or future location.

52. 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.

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

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

THE STATE OF NEW YORK

Dated: 5/11/2026

LETITIA JAMES
New York State Attorney General

By: 
Susan Jacquemot

Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10271
Phone: 212-416-8030
susan.jacquemot@ag.ny.gov


RELATOR NISHITH KUMAR

Dated: 5/7/26


NISHITH KUMAR

Dated: May 7, 2026

KIRBY McINERNEY LLP

By: 
Randall M. Fox
825 Third Avenue, 16th Floor
New York, NY 10022
Phone: 212-371-6600
rfox@kmlp.com

LIEFF CABRASER HEIMANN &
BERNSTEIN LLP

By: _____
Rachel Geman
250 Hudson Street
New York, NY 10013
Phone: 212-355-9500
rgeman@lchb.com

Attorneys for Relator

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

THE STATE OF NEW YORK

Dated: _____

LETITIA JAMES
New York State Attorney General

By: _____

Susan Jacquemot
Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10271
Phone: 212-416-8030
susan.jacquemot@ag.ny.gov

RELATOR NISHITH KUMAR

Dated: _____

NISHITH KUMAR

Dated: _____

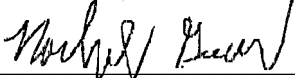
KIRBY McINERNEY LLP

By: _____

Randall M. Fox
825 Third Avenue, 16th Floor
New York, NY 10022
Phone: 212-371-6600
rfox@kmlp.com

Dated: 05/08/2026

LIEFF CABRASER HEIMANN &
BERNSTEIN LLP

By:  _____

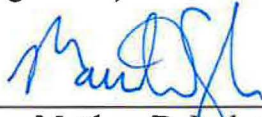
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Attorneys for Relator

SETTLING PARTIES

Dated: 5/8/2026

MAYER BROWN LLP (on behalf of
Settling Parties)

By: 

Matthew D. Ingber
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