

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

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

Plaintiff,

-against-

BUILD WITH PROSPECT, INC., JEREMY
SHANNON, CARLA SHANNON, and JAMES
MCDANIEL,

Defendants.

Index No. 518838/2021
Justice Carl J. Landicino

SETTLEMENT AGREEMENT

This Agreement shall constitute the full Settlement Agreement (“Settlement Agreement” or “Agreement”) between the PEOPLE OF THE STATE OF NEW YORK, BY THE ATTORNEY GENERAL OF THE STATE OF NEW YORK (“Plaintiff” or the “NYAG”) and Defendants BUILD WITH PROSPECT, INC. (“BWP”), JEREMY SHANNON, CARLA SHANNON, and JAMES MCDANIEL (collectively, “Defendants”), to settle, fully and finally, this Action (as defined below).

A. PEOPLE OF THE STATE OF NEW YORK, BY THE ATTORNEY GENERAL OF THE STATE OF NEW YORK v. BUILD WITH PROSPECT, INC., JEREMY SHANNON, CARLA SHANNON, and JAMES MCDANIEL, Index No. 518838/2021 (the “Action”), is currently pending in the Supreme Court of the State of New York, Kings County.

B. In the complaint filed July 28, 2021 (the “Complaint”), the NYAG brought claims for relief pursuant to Executive Law § 63(12) against Defendants for: (1) unlawful deductions, in violation of New York Labor Law § 193; and (2) unlawful kickbacks of wages, in violation of Labor Law § 198-b (collectively, the “Action Claims”).

C. In their answer filed September 24, 2021, Defendants denied all of the allegations asserted in the Complaint and continue to deny liability for the Action Claims.

D. This Agreement is made in consideration of the facts and recitals set forth herein. Plaintiff and Defendants (collectively, the “Parties”) understand, acknowledge, and agree that this Agreement constitutes a compromise of all the disputed claims at issue in the Action and that it is the desire and intention of each of the Parties to effect a final and complete resolution of the Action.

E. The NYAG finds the relief and agreements contained in this Settlement Agreement appropriate and in the public interest. Therefore, the NYAG is willing to accept this Agreement in lieu of continuing this Action for violations of New York law as described above.

F. Acceptance of this Settlement Agreement by the NYAG is not an approval or endorsement by the NYAG of any of Defendants' practices or procedures.

G. The Parties believe that the Settlement is fair, reasonable, and adequate. The Parties arrived at this Settlement through arm's-length negotiations and taking into account all relevant factors. The NYAG has determined that the Settlement is in the public interest of the state. The Parties recognize the uncertainty, risk, expense, and delay attendant to continuing the Action through additional discovery and trial, and any appeals following trial. Accordingly, the Parties desire to fully, finally, and forever settle the Action.

Therefore, in consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

I. RELIEF

A. Settlement Payment

1. Defendants agree to pay to the State of New York a total of twenty-four thousand dollars (\$24,000) ("the Settlement Amount") in resolution of the pending Action, which will be paid directly to the NYAG and will be used for distribution as full and final restitution to former Employees of the Defendants that made payments to BWP for its stock.
2. Defendants shall pay the Settlement Amount by February 21, 2023 ("Settlement Amount Payment Date").
3. Payment of the Settlement Amount shall be made in the form of a wire transfer, certified check, bank check, or attorney's check made payable to the "NYS Office of the Attorney General," and forwarded to the New York State Office of the Attorney General, to the attention of Jessica Agarwal, Assistant Attorney General, Office of the Attorney General, Labor Bureau, 28 Liberty Street, 15th Floor, New York 10005.
4. Defendants agree that payment of the Settlement Amount by February 21, 2023 is of the essence and failure to pay the Settlement Amount by February 23, 2023 constitutes a material breach of the Agreement.

5. The NYAG has sole discretion to determine which former Employees of the Defendants will be eligible for restitution from the Settlement Amount and to determine the amount of restitution for each former Employee. Defendants agree to provide all commercially reasonable cooperation necessary to locate former Employees until the Settlement Amount Payment Date. The NYAG shall obtain acknowledgments of payment for any and all Action Claims from Employees of Defendants who receive restitution payments pursuant to the terms of this Agreement, and to provide a copy of same to Defendants' counsel within five (5) business days of receipt of such acknowledgments.
 6. Non-Dischargeable Judgement: In the event Defendants file for bankruptcy prior to paying the Settlement Amount, Defendants expressly agree not to seek discharge or extinguish the amounts owed as part of this Settlement.
- B. Subject to the terms and conditions of this Agreement, including Section II.A, nothing in this Settlement Agreement shall be construed as relieving the Defendants of their obligations to comply with New York State and federal laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

II. RELEASE AND STIPULATION OF DISCONTINUANCE

- A. In consideration of the undertakings described herein, but expressly excepting the obligations created by, and the rights expressly reserved within this Agreement, the NYAG hereby absolutely, unconditionally, completely, irrevocably, and without reservation remises, releases, acquits and forever discharges (or, if applicable, shall be deemed to have done the same), the Defendants and their respective affiliates, parent corporations, subsidiaries, agents, representatives, officers, directors, shareholders, employees, attorneys, heirs, executors, successors and assigns (collectively, the "Releasees"), of and from the Action Claims.
- B. The NYAG agrees that it will file with the Court a Stipulation of Discontinuance with prejudice executed by the Parties within three (3) business days of receipt of the Settlement Amount.

III. REPRESENTATIONS AND WARRANTIES

Each of the Parties represents and warrants to, and agrees with, each of the other Parties as follows:

- A. None of the Parties relies or has relied on any statement, representation, omission, inducement, or promise of any other party (or any officer, agent, employee, representative, or attorney for any other party) in executing this Agreement, or in making the Settlement provided for herein, except as expressly stated in this Agreement.

- B. Each of the Parties has investigated the facts pertaining to the Settlement and this Agreement, and all matters pertaining thereto, to the full extent deemed necessary by that party and its attorneys.
- C. Each of the Parties has carefully read, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement after having had the opportunity to consult with, and having in fact consulted with, its attorneys.
- D. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement or any provision hereof.
- E. Each of the Parties has participated in the drafting of all provisions of this Agreement, has had an adequate opportunity to read, review, and consider the effect of the language of this Agreement, and has agreed to its terms. The Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.
- F. This Agreement constitutes and comprises the entire agreement among the Parties with respect to the subject matter hereof. It supersedes all prior and contemporaneous oral and written agreements and discussions.
- G. The Parties agree that any dispute regarding the interpretation or enforcement of the terms of this Settlement or in connection with this Agreement shall be resolved by the Court.
- H. In any action or proceeding by the Parties to enforce this Agreement or for violations of the Agreement, the Parties expressly agree and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the Effective Date of the Agreement.

IV. MISCELLANEOUS

- A. Amendment: This Agreement may be amended only by written agreement signed by the Parties.
- B. Cooperation in Implementation
 - 1. The Parties agree to provide each other with any information and to prepare and execute any additional documents that may reasonably be necessary to effectuate the terms of this Agreement.

2. Any failure by any Party to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Parties, notwithstanding any 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.

C. Governing Law: This Agreement shall be construed and governed in accordance with the procedural and substantive law of the state of New York, without regard to any conflict of laws principles.

D. Signatures: This Agreement may be executed in counterparts, and, when so executed, shall constitute a binding original. The Parties represent and warrant, through the signatures below, that the terms and conditions of this Agreement are duly approved, and execution of this Agreement is duly authorized. A signature, or copy of a signature, transmitted electronically, including by facsimile or email, shall serve as an original for all purposes.

APPROVED AND ACKNOWLEDGED:

APPROVED AND ACKNOWLEDGED:

Jessica Agarwal

Plaintiff New York Attorney General

Defendant Build with Prospect, Inc.

By: Jessica Agarwal
Title: Assistant Attorney General
Date: February 9, 2023

By: _____
Title: _____
Date: _____

Defendant Jeremy Shannon

Defendant Carla Shannon

Defendant James McDaniel

2. Any failure by any Party to insist upon the strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Parties, notwithstanding any 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.
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APPROVED AND ACKNOWLEDGED:

Plaintiff New York Attorney General

By: _____
Title: _____
Date: _____

APPROVED AND ACKNOWLEDGED:

Defendant Build with Prospect, Inc.

By: JEREMY SHANNON
Title: CEO
Date: 2/2/23

Defendant Jeremy Shannon

Defendant Carla Shannon

Defendant James McDaniel