

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

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

and

THE STATE OF NEW YORK, and all legal
subdivisions thereof, *ex rel.* MATTHEW E.
ARGEROPLOS and DENISE GARCIA
CLARK,

Index No. 100365/2017

Plaintiffs,

-against-

SERVICE STATION VENDING
EQUIPMENT, INC., and WILLIAM MCCABE,

Defendants.

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (“Agreement”) is entered into among the State of New York (the “State”), defendant Service Station Vending Equipment, Inc. (“SSVE”), defendant William McCabe (“McCabe,” and together with SSVE, “Defendants”), and relators Matthew E. Argeroplos and Denise Garcia Clark (the “Relators”), through their authorized representatives. The above-named parties are hereinafter collectively referred to as “the Parties.”

PREAMBLE

WHEREAS, on or about March 24, 2017, Relators filed a *qui tam* action (the “Action”) captioned *State of New York ex rel. Matthew E. Argeroplos and Denise Garcia Clark v. Service Station Vending Equipment, Inc., et ano.*, pursuant to the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* (“NYFCA”), alleging that

Defendants knowingly made, used, or caused to be made or used, false statements and records that were material to Defendants' obligation to pay or transmit money to the State; and

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

WHEREAS, as a result of that investigation, the State contends that it has certain civil claims against Defendants under the NYFCA, the Tax Law, and Executive Law § 63(12); and

WHEREAS, Defendants 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 discontinue its investigation in connection with the allegations of the Complaint in the Action; and

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

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:

BACKGROUND

1. Defendant SSVE is a corporation with a principal place of business in Floral Park, New York. It is in the business of distributing, installing, and maintaining self-service coin-operated air machines used to inflate automobile tires and vacuum machines for motor vehicles. Defendant McCabe is the owner and president of SSVE.

2. For over ten years, Defendants failed to remit the full amount of sales taxes due for customers' uses of air machines, despite the fact that SSVE was well aware that it had an obligation to remit these sales taxes to the State.

3. SSVE enters into revenue sharing agreements with each of its clients—mostly car wash and filling stations—whereby SSVE agrees to install, operate, and maintain its air and vacuum machines at clients' locations, collect the coins deposited in its machines, and share a percentage of the revenue generated from its machines with its clients.

4. SSVE employs technicians to collect the revenue from its machines by going to its clients' locations and removing the quarters that end-users have deposited to use the air and vacuum machines; technicians then weigh the quarters using a special scale, which calculates a count of the number of quarters based upon the weight of the quarters. SSVE technicians prepare and issue an invoice to SSVE's customers.

5. Over the last nine years, SSVE has routinely entered coin collection information from invoices into a coin collection database, which records the revenue from each machine, separately identifying revenue from vacuum and air machines.

6. Defendants had actual knowledge that sales from SSVE's air machines are subject to sales tax in New York. In 1997, SSVE requested an advisory opinion from the Department of Taxation and Finance ("DTF") on whether sales from its coin-operated machines used to inflate tires were exempt from sales tax. In response, DTF issued an advisory opinion that explicitly stated that receipts from sales of services rendered by tire inflation machines are taxable under Tax Law § 1105(c)(3), since inflating of tires is maintaining tangible personal property to keep it in a condition of fitness, efficiency,

readiness, or safety. *See* Adv. Op., TSB-A-98(29)S. The Advisory Opinion clearly stated that “[r]eceipts from the sales of services rendered by tire inflating machines are taxable.”

7. In January 2016, SSVE’s newly-hired accounting firm discussed several tax and accounting issues with McCabe, including SSVE’s failure to collect the appropriate amount of sales tax; however, McCabe failed to change his practices with respect to the collection of sales tax on air sales.

8. In 2016 and 2017, SSVE and McCabe hired a lobbying firm to lobby State legislators on two pieces of proposed legislation that would have provided an exemption for sales tax on sales from coin-operated air machines. Neither bill was enacted.

9. Despite actual knowledge that sales from SSVE’s air machines were subject to sales tax, Defendants routinely failed to collect and remit the proper amount of sales tax on revenue from their air machines.

10. In most instances, McCabe instructed SSVE technicians not to collect any sales tax from the coins recovered from air machines at certain locations where clients pay close attention to the amount of quarters pulled from the machines.

11. In other instances, McCabe instructed technicians to deduct and retain a percentage of the coins collected from air machines as sales tax, but failed to pay over the full amount collected as sales tax to the State.

12. McCabe made the decision of how much sales tax to report to the State during each quarterly filing. He personally signed sales tax returns from at least 2007 until February 2011 and instructed his bookkeeper to submit e-filed returns on his behalf from 2011 until the present.

13. For the period from 2010 through May 2018, Defendants failed to collect and remit to the State over \$2,400,000 in sales taxes on sales from its air machines.

14. In addition, McCabe and SSVE have underreported sales receipts thereby avoiding income taxes and corporate franchise taxes, avoided paying sales tax on purchases of equipment and parts not intended for resale, failed to pay withholding taxes for certain employees who were paid in cash, off-the-books, and avoided paying higher premiums to the New York State Insurance Fund.

15. The conduct described in the foregoing Paragraphs 1 through 14 is hereinafter referred to as the “Covered Conduct.”

TERMS AND CONDITIONS

16. As a term of this agreement, Defendants admit, acknowledge, and accept responsibility for the conduct in Paragraphs 1 through 13 above and admit that the conduct in Paragraphs 1 through 13 violates the NYFCA, the Tax Law, and Executive Law § 63(12). Defendants neither admit nor deny the conduct in Paragraph 14 above.

Settlement Amount

17. Monetary Relief Amount with Suspended Payment. Defendants shall pay to the State \$17,369,415.79 in damages, penalties, taxes, and fees (the “Monetary Relief Amount”). However, in reliance upon representations made by Defendants in their Statement of Financial Condition submitted to the Office of the Attorney General, and representations made by Defendants’ counsel to the Office of the Attorney General, including any related financial disclosures provided by Defendants, the State agrees to suspend payment of \$13,119,415.79 from the Monetary Relief Amount, provided that Defendants pay the unsuspended balance of \$4,250,000.00 (the “Settlement Amount”) within 12 months of the Effective Date of this Agreement. Failure of Defendants to pay

the Settlement Amount in the manner prescribed in paragraphs 20 and 21 is a default within the terms of this Agreement, and upon such default the Attorney General shall be entitled to file and enter judgment for the entire Confession Amount, pursuant to Paragraphs 22 and 38 below.

18. Defendants will pay the Settlement Amount to resolve the Action and the Office of the Attorney General's investigation, and claims that are the subject of a separate closing agreement ("Closing Agreement") between Defendants and DTF. The Settlement Amount represents damages and penalties being recovered by the State, taxes, penalties, and interest under the N.Y. Tax Law, the Relators' share, *i.e.*, the share to which the Relators are entitled under New York State Finance Law § 190(6), and the State's attorney's fees and costs.

19. The Settlement Amount is divided into two portions: a portion paid to the State ("State's Share"), and a portion paid to the Relators ("Relators' Share"). The Relators' Share is the portion to which the Relators are entitled under New York State Finance Law § 190(6).

20. Defendants agree to pay the State's Share in the sum of three million three hundred and fifty-seven thousand and five hundred dollars (\$3,357,500.00) in U.S. dollars as follows:

- a. Within 15 days of the Effective Date (defined below) of this Agreement, Defendants shall pay twenty-three thousand seven hundred dollars (\$23,700.00) to the State.
- b. Within twelve months of the Effective Date (defined below) of this Agreement, Defendants shall pay the balance of the State's Share of

\$3,333,800.00 to the State. Provided, however, that if all or any part of SSVE or any interest in SSVE is sold or transferred without the Attorney General's prior written consent, or if any of the Defendants becomes the subject of any bankruptcy filing, the entire Settlement Amount, including the State's Share, then unpaid shall become immediately due and payable.

- c. Such payments will be made by wire transfer pursuant to instructions provided by the Office of the Attorney General.

21. In addition, Defendants agree to pay the Relators' Share in the sum of eight hundred and ninety-two thousand and five hundred dollars (\$892,500.00) in U.S. dollars as follows:

- a. Within 15 days of the Effective Date (defined below) of this Agreement, Defendants shall pay six thousand three hundred dollars (\$6,300.00) to the Relators.
- b. Within twelve months of the Effective Date (defined below) of this Agreement, Defendants shall pay the balance of the Relators' Share \$886,200.00 to the Relators. Provided, however, that if all or any part of SSVE or any interest in SSVE is sold or transferred without the Attorney General's prior written consent, or if any of the Defendants becomes the subject of any bankruptcy filing, the entire Settlement Amount, including the Relator's Share, then unpaid shall become immediately due and payable.

- c. Such payments shall be made through electronic transfer to a trust account for Relators, through Relators' counsel, in accordance with written instructions to be provided by Relators' counsel.

22. To secure payment of the Settlement Amount to the State and Relators, Defendants will execute and deliver, at the time of the execution and delivery of this Agreement, the accompanying Affidavits for Judgment by Confession (attached hereto as Exhibits A and B), confessing judgment in the amount of \$8,500,000 (the "Confession Amount") plus collection fees of twenty two percent (22%) of any unpaid Confession Amount at the time of any subsequent default, plus statutory costs of \$15.00. The State will reduce the Confession Amount by the principal amount of payments made by Defendants to the State and Relators to calculate the unpaid Confession Amount at the time of any subsequent default. The State agrees not to file these Affidavits confessing Judgment unless and until there has been a Default under this Agreement. The decision to execute as to Defendants SSVE or William McCabe, or some combination thereof shall be in the sole discretion of the State.

23. The Defendants represent and warrant that William McCabe has been duly authorized to and has the authority to sign an Affidavit for Judgment by Confession on behalf of SSVE, as per the corporate resolution attached hereto as Exhibit C. Upon payment of the Settlement Amount, the original Affidavits for Judgment by Confession will be returned to Defendants and/or destroyed, with notice to Defendants' counsel.

24. Defendants agree that they will not claim, assert, or apply for a tax deduction or tax credit on any New York State tax return, for any portion of the amount due under this Agreement or the Closing Agreement.

25. In consideration of the obligations of Defendants as set forth in this Agreement, and conditioned upon the Defendants' initial payments to the State and Relators pursuant to paragraphs 20 and 21, within thirty (30) days after the later of the Effective Date (defined below) of this Agreement or the satisfaction of the conditions described in this paragraph, the State and Relators shall file, pursuant to CPLR 3217(a), a Notice of Discontinuance with respect to the claims against Defendants, subject to the exceptions set forth in this Agreement. This dismissal is to be without prejudice. Within fifteen (15) days of receipt of the last of all of the payments as required herein described by Paragraphs 20 and 21, the State and Relators shall file an Amended Notice of Discontinuance providing that the dismissal is with prejudice. Such dismissals shall, however, expressly preserve the Court's jurisdiction over Defendants' obligation to pay reasonable attorney's fees, expenses and costs to Relators pursuant to State Fin. Law § 190.

Non-Monetary Relief

26. General Injunction. Defendants agree that they will not engage, or attempt to engage, in violations of any applicable laws, including but not limited to the NYFCA, the Tax Law, and Executive Law § 63(12), and expressly agree and acknowledge that any such conduct is a violation of this Agreement.

27. Programmatic Relief. Defendants agree as follows:

- a. Defendants agree to comply with all provisions of the New York State Tax Law regarding filing all tax returns and paying all taxes due.
- b. Defendants agree to maintain records in sufficient detail to independently determine the taxable status of each sale and the amount of tax due and

collected, and Defendants agree to separately state the tax due and collected on any invoice or other statement of the transaction provided to customers for all sales subject to New York State and local sales taxes.

- c. Defendants shall provide the Attorney General with a certification in writing and signed by both Defendants affirming their compliance with the requirements of the Tax Law, to be submitted to the Attorney General thirty (30) days after the Effective Date of this Agreement. Such certificate of compliance shall include a report of SSVE's gross sales, sales subject to State sales tax, gross wages paid, and any and all taxes collected and remitted to the State or local governments on behalf of SSVE, for the previous fiscal year. Thereafter, a certification of compliance and accompanying report shall be submitted by both Defendants to the Attorney General on an annual basis for the following three (3) years, commencing one year after the Effective Date of this Agreement.
- d. The Parties agree that it would be difficult to value the damages caused by default in the performance of any obligation under this paragraph, and therefore agree that Defendants shall pay to the State of New York a stipulated penalty of \$25,000 for each and every such default occurring after the Effective Date.

Releases

28. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Defendants set forth in this Agreement, conditioned upon the full payment

by Defendants of the Settlement Amount and subject to Paragraph 37 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).

29. 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 for any conduct other than the Covered Conduct not covered by this Agreement;
- d. Any liability to the State (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon such obligations as are created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for personal injury or property damage arising from the Covered Conduct;

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

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

31. In consideration of the obligations of Defendants in this Agreement, conditioned upon the full payment by Defendants of the Settlement Amount, Relators, for themselves, and for their heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, release Defendants from any civil monetary claim Relators have 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 Relators from seeking to recover their expenses or attorney's fees and costs from Defendants, pursuant to N.Y. State Fin. Law § 190 or from seeking redress pursuant to N.Y. State Fin. Law § 191.

32. 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.

33. Defendants, for themselves and their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns fully and finally release Relators, their 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 Relators, their heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, related to the Covered Conduct and Relators' and the State's investigations and prosecution concerning the Action.

34. The Relators, for each of them individually, and for their 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 Relators have 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. Relators accept the payment described in Paragraph 21 in full settlement of any claims Relators may have against the State under this Agreement or as a result of the Action with respect to the Settlement Amount, but reserve the right to seek additional payment pursuant to New York State Finance Law § 190(6) for any recoveries by the State from Defendants under this Agreement in excess of the \$4,250,000 Settlement Amount. This Agreement does not resolve or in any manner affect any claims the State has or may have against Relators arising under State tax laws, or any claims arising under this Agreement.

35. Relators, and each of their respective heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable pursuant to New York State Finance Law § 190(5)(b)(ii).

36. The State has agreed to the terms of this Agreement based on, among other things, the representations made to the Office of the Attorney General by Defendants and their counsel, including but not limited to sworn financial disclosures, the accuracy and completeness of which the State has relied on in reaching this Agreement. To the extent that any material representations or non-disclosures are later found to be materially inaccurate, the Office of the Attorney General may at its option and in its sole discretion: (a) rescind this Agreement as to SSVE and/or McCabe and file claims against SSVE and/or McCabe based on the Covered Conduct, or (b) let this Agreement stand and collect from McCabe and/or SSVE the full Settlement Amount plus one hundred percent (100%) of the value of the net worth of SSVE or McCabe that was not previously disclosed or was disclosed inaccurately or misleadingly to the Office of the Attorney General by SSVE and/or McCabe. Defendants each agree not to contest any collection action undertaken by the State pursuant to this provision, and immediately to pay the State all reasonable costs incurred in such an action, including attorney's fees and expenses. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Defendants in agreeing to this Agreement. Defendants acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

Bankruptcy and Non-Payment

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

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

38. In the event of the failure by Defendants to make any or all payments of the Settlement Amount, including the State’s Share and/or the Relators’ Share, when due according to Paragraphs 20 and 21, 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 50 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 ten (10) 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 ten (10) calendar days from the effective date of the notice of non-payment (“Default”), the State, in its sole discretion, may declare or do any or all of the following, or may exercise, without limitation, any remedies available under law, including:

- a. The State may declare the entire Settlement Amount, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Pursue all available remedies to enforce this Agreement and remedy violations of 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 or pursuant to law, and Defendants agree to pay the State, without limitation, all reasonable costs of collection and enforcement of this Agreement, including attorney’s fees, expenses and court costs;

- 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 such 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 of Default, 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; and/or
- d. File and enter the applicable Affidavits for Judgment by Confession as a judgment against SSVE and/or William McCabe, at any time, and without further notice, for the balance owed pursuant to this Agreement at the time of Default, less any payments made prior to Default, plus the collection fees and statutory costs described above.

39. In the event of the failure by Defendants to make any or all payments of the Relators' Share when due according to Paragraph 21, the Relators will provide written notice of the non-payment to Defendants. Such notice shall be given to the person and address designated in Paragraph 50 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 ten (10) calendar days from the effective

date of the notice. If Defendants fail to pay the overdue unpaid balance of its payment obligations for the Relators' Share under this Agreement within ten (10) calendar days from the effective date of the notice of non-payment ("Relators' Share Default"), the Relators, in their sole discretion, may declare or do any or all of the following:

- a. The Relators may declare the entire Relators' 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 Relators' Share Default until payment of the remaining Relators' 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 Relators' Share plus applicable interest.
- c. Defendants agree not to contest any action to enforce this Agreement with respect to the Relators' Share or any other collection action undertaken by the Relators pursuant to this Paragraph, and Defendants agree to pay the Relators all reasonable costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

Additional Terms

40. 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.

41. 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.

42. Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or expressing the view that this Agreement is without factual basis. Nothing in this Paragraph affects Defendants' testimonial obligations or its right to take legal or factual positions in defense of litigation or other legal proceedings to which the State is not a party.

43. This Agreement is not intended for use by any third party in any other proceeding.

44. 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.

45. Except as provided in Paragraphs 25, 38, 39, and 53, each Party shall bear its own legal and other costs incurred in connection with this matter.

46. 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.

47. 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. Defendants shall not sell, assign, or transfer the

business of SSVE or substantially all of its assets, without any document effecting such sale or transfer explicitly requiring the successor, assignee, transferee, or other purchaser of SSVE or substantially all of its assets, to assume the non-monetary obligations of Paragraphs 26 and 27 of this Agreement. Defendants shall provide notice to the Office of the Attorney General at least ten (10) days prior to all or any part of SSVE or any interest in SSVE being sold, assigned, or transferred.

48. 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.

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

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

If to the State of New York: David E. Farber
Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, NY 10271
(212) 416-6012

If to Relators: Brendan Little, Esq.
LEVY KONIGSBERG LLP
800 Third Avenue, 11th Floor
New York, New York 10022
(212) 605-6200

If to Defendants: Amy Marion, Esq.
ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP
3 Dakota Drive
Suite 300
Lake Success, New York 11042
(516) 328-2300

51. Except for written notices of Defendants' non-payment issued by the State or Relators, the sending and receipt of which shall be governed by the provisions in Paragraphs 38 and 39 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.

52. In any subsequent investigation, civil action, or proceeding by the State to enforce this Agreement, or for violations of the Agreement, Defendants expressly agree

and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Agreement, and that the State may use statements, documents or other materials produced or provided by the Defendants prior to or after the effective date of this Agreement.

53. If a court of competent jurisdiction determines that Defendants have breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described in Paragraphs 38 and 39, Defendants shall pay to the Office of the Attorney General and/or to Relators the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

54. 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.

55. 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.

56. 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.

57. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

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

THE STATE OF NEW YORK

Dated: 4/1/2021

LETITIA JAMES
New York State Attorney General

BY: 

David E. Farber

Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10005
(212) 416-6507

RELATORS

Dated: _____

Matthew E. Argeroplos

Dated: _____

Denise Garcia Clark

Dated: _____

LEVY KONIGSBERG LLP

By: _____
Brendan Little, Esq.

800 Third Avenue, 11th Floor
New York, New York 10022
(212) 605-6200

Attorneys for Relators

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

THE STATE OF NEW YORK

Dated: _____

LETITIA JAMES
New York State Attorney General

BY: _____

David E. Farber

Assistant Attorney General
Office of the New York Attorney General
Taxpayer Protection Bureau
28 Liberty Street, 21st Floor
New York, New York 10005
(212) 416-6507

RELATORS

Dated: 3-10-21



Matthew E. Argeropoulos

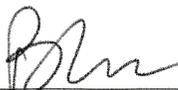
Dated: 3-10-21



Denise Garcia-Clark
now Argeropoulos

Dated: 3-10-21

LEVY KONIGSBERG LLP

By: 

Brendan Little, Esq.

800 Third Avenue, 11th Floor
New York, New York 10022
(212) 605-6200

Attorneys for Relators

DEFENDANTS

Dated: 3/18/21



William McCabe

Dated: 3/18/21

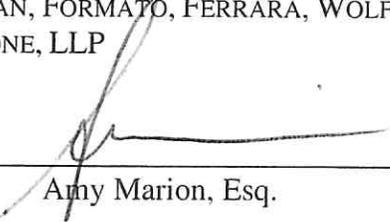
SERVICE STATION VENDING
EQUIPMENT, INC.

By: 

William McCabe
President

Dated: 3/24/2021

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP

By: 

Amy Marion, Esq.

3 Dakota Drive
Suite 300
Lake Success, New York 11042
(516) 328-2300

Attorneys for Defendants

DEFENDANTS

Dated: _____

William McCabe

Dated: _____

SERVICE STATION VENDING
EQUIPMENT, INC.

By: _____

William McCabe
President

Dated: _____

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP

By: _____

Amy Marion, Esq.

3 Dakota Drive
Suite 300
Lake Success, New York 11042
(516) 328-2300

Attorneys for Defendants

EXHIBIT A

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

THE STATE OF NEW YORK, and all legal subdivisions
thereof, *ex rel.* MATTHEW E. ARGEROPLOS and
DENISE GARCIA CLARK,

Plaintiffs,

-against-

SERVICE STATION VENDING EQUIPMENT, INC.,
and WILLIAM MCCABE,

Defendants.

**AFFIDAVIT FOR JUDGMENT
BY CONFESSION**

State of New York :
: ss.:
County of _____ :

William McCabe, being duly sworn, deposes and says:

1. I am a principal of the Defendant, Service Station Vending Equipment, Inc. (“SSVE”), in the above-captioned action.
2. The principal place of business of SSVE is 120 Cherry Street, Floral Park, NY 11001, located in the County of Nassau.
3. I am duly authorized to and have the authority to sign this Affidavit for Judgment by Confession on behalf of SSVE pursuant to the corporate resolution attached hereto as Exhibit A and incorporated by reference herein.
4. SSVE entered into a Stipulation and Settlement Agreement, by and between Letitia James, Attorney General of the State of New York on behalf of the People of the State of New York (the “State” or “Plaintiff”), Relators Matthew E. Argeroplos and Denise Garcia Clark, SSVE, and William McCabe, (the “Settlement Agreement”). A copy of the Settlement

EXHIBIT A

Agreement executed by SSVE is attached hereto as Exhibit B and the terms are incorporated by reference herein.

5. Pursuant to New York CPLR § 3218(a)(1) and § 501, I hereby authorize entry of judgment confessed hereby, on behalf of SSVE, in the County of Nassau, State of New York, and submit SSVE to the jurisdiction of the State of New York, and venue in Nassau County.

6. Pursuant to the Settlement Agreement, I confess judgment in this Court on behalf of SSVE in favor of the Plaintiff, State of New York, for the Confession Amount of \$8,500,000.00, to be reduced by the principal amount of payments made by SSVE to Plaintiff and Relators pursuant to the Settlement Agreement, plus collection fees of twenty-two percent (22%) of any unpaid amount of the Confession Amount at the time of any subsequent default, plus statutory costs of \$15.00, and hereby authorize the Plaintiff or its authorized agents and/or assigns to enter judgment against SSVE for that sum, including but not limited to, the collection fee and statutory costs above.

7. This Confession of Judgment is for a joint debt justly due by SSVE and William McCabe to the Plaintiff arising out of the Settlement Agreement.

8. Pursuant to the Settlement Agreement, SSVE has agreed to pay the amounts described in paragraph 6 above.

9. SSVE executed this Affidavit pursuant to the provisions of the Settlement Agreement and expressly agreed that Plaintiff may enter judgment of confession against SSVE for the amount stated in Paragraph 6 above, if SSVE fails to timely and properly make payment under the terms of the Settlement Agreement and does not cure such failure within 10 days of Plaintiff's written notice thereof.

EXHIBIT A

10. Upon timely and full payment pursuant to the terms of the Settlement Agreement, this confession of judgment shall be void.

11. Changes to this Confession of Judgment must be in writing, signed by both a corporate principal of SSVE, or its successor in interest, and the representative of the Plaintiff.

12. This Confession of Judgment is not for the purpose of securing the Plaintiff against a contingent liability.

13. This Confession of Judgment does not relate to a consumer debt.

[Signature Page Follows]

EXHIBIT B

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

THE STATE OF NEW YORK, and all legal subdivisions thereof, *ex rel.* MATTHEW E. ARGEROPLOS and DENISE GARCIA CLARK,

Plaintiffs,

-against-

SERVICE STATION VENDING EQUIPMENT, INC.,
and WILLIAM MCCABE,

Defendants.

**AFFIDAVIT FOR JUDGMENT
BY CONFESSION**

State of New York :
: SS:
County of _____ :

William McCabe, being duly sworn, deposes and says:

1. I am a Defendant in the above-captioned action.
2. I currently reside at 120 Cherry Street, Floral Park, NY 11001, such residence being in the County of Nassau.
3. I entered into a Stipulation and Settlement Agreement, by and between Letitia James, Attorney General of the State of New York on behalf of the People of the State of New York (the "State" or "Plaintiff"), Relators Matthew E. Argeroplos and Denise Garcia Clark, Service Station Vending Equipment, Inc. ("SSVE"), and William McCabe, (the "Settlement Agreement"). A copy of the Settlement Agreement executed by me is attached hereto and the terms are incorporated by reference herein.
4. Pursuant to New York CPLR § 3218(a)(1) and § 501, I hereby authorize entry of judgment confessed hereby in the County of Nassau, State of New York, and submit to the

EXHIBIT B

jurisdiction of the State of New York, and venue in Nassau County, notwithstanding my residency.

5. Pursuant to the Settlement Agreement, I confess judgment in this Court in favor of the Plaintiff, State of New York, for the Confession Amount of \$8,500,000.00, to be reduced by the principal amount of payments made by me to Plaintiff and Relators pursuant to the Settlement Agreement, plus collection fees of twenty-two percent (22%) of any unpaid amount of the Confession Amount at the time of any subsequent default, plus statutory costs of \$15.00, and hereby authorize the Plaintiff or its authorized agents and/or assigns to enter judgment against me for that sum, including but not limited to, the collection fee and statutory costs above.

6. This Confession of Judgment is for a joint debt justly due by me and SSVE to the Plaintiff arising out of the Settlement Agreement.

7. Pursuant to the Settlement Agreement, I have agreed to pay the amounts described in paragraph 5 above.

8. I executed this Affidavit pursuant to the provisions of the Settlement Agreement and expressly agreed that Plaintiff may enter judgment of confession against me for the amount stated in Paragraph 5 above, if I fail to timely and properly make payment under the terms of the Settlement Agreement and do not cure such failure within 10 days of Plaintiff's written notice thereof.

9. Upon timely and full payment pursuant to the terms of the Settlement Agreement, this confession of judgment shall be void.

10. This confession of judgment does not relate to a consumer debt.

EXHIBIT B

11. This confession of judgment is not for the purpose of securing the Plaintiff against a contingent liability.

William McCabe

Sworn to before me this
_____ day of _____, 2021

NOTARY PUBLIC

EXHIBIT C

**UNANIMOUS WRITTEN CONSENT
OF THE
THE BOARD OF DIRECTORS
OF
SERVICE STATION VENDING EQUIPMENT, INC. ("SSVE")**

The undersigned, being all of the members of the board of directors (the "Board") of SSVE, a New York corporation (the "Company"), acting by written consent in lieu of a meeting pursuant to Section 708(b) of the New York Business Corporation Law, do hereby consent to and adopt as the actions of the Board, the following resolutions:

WHEREAS, the Board believes it is in the best interest of the Company and its shareholders to enter into a Stipulation and Settlement Agreement by and between Letitia James, Attorney General of the State of New York, Matthew E. Argeroplos, and Denise Garcia Clark and SSVE and William McCabe ("the Settlement");

WHEREAS, the Board believes it is in the best interest of the Company and its shareholders to authorize its President William McCabe to execute the Affidavit for Judgment by Confession on behalf of SSVE that accompanies the Settlement; and

NOW, THEREFORE, BE IT RESOLVED, that the officers of the Company be, and each of them hereby, being the Board of SSVE, authorize William McCabe, by and on behalf of SSVE to execute the Affidavit for Judgment by Confession which accompanies the Settlement.

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the 8th day of March 2021.


William McCabe, President


Catherine McCabe, Secretary