

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

-----x Index No. 452256/2016

THE COMMISSIONERS OF THE STATE
INSURANCE FUND,

Plaintiff,

**STIPULATION OF
SETTLEMENT**

-against-

SANDEMAR FINISHES, LLC,

Defendant.
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WHEREAS, plaintiff provided defendant with workers' compensation insurance coverage for which premiums were due (the Coverage);

WHEREAS, on January 13, 2017, a default judgment was entered in favor of plaintiff and against defendant for \$240,003.89 ("Judgment"), with interest from the date of entry for the Coverage;

WHEREAS, the Judgment was partially satisfied, leaving a balance due of \$240,003.81, with interest from February 8, 2017 (the "Reduced Judgment");

WHEREAS, the Reduced Judgement is being vacated and all executions in connection therewith be and the same hereby are withdrawn;

WHEREAS, defendant will be entitled to receive a dividend credit from plaintiff in and around May 2018 of \$85,124.85 (the Dividend) to be applied against the balance due for the Coverage;

WHEREAS, plaintiff, as part of this settlement, is willing to credit the Dividend against the monies claimed due by plaintiff from defendant for the Coverage, thereby reducing the total of all sums owed by defendant to plaintiff to \$175,000.00; and

WHEREAS, the parties wish to enter into a Stipulation of Settlement resolving all disputes between the parties and other related non-parties and arrange for vacating the Judgment, withdrawing various motions and executions as provided in the Stipulation of Settlement;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the attorney for the plaintiff and the attorneys for the defendant that this action is settled on the following terms and conditions:

1. On the signing of this Stipulation of Settlement the attorneys for the parties shall enter into a Stipulation Vacating the Reduced Judgment (Exhibit 1), a Stipulation vacating the Execution served on Defendant, the Executions With Notice to Garnishee served on Interior Management I, Inc., Interior Management LLC and JPMorgan Chase Bank, N.A (Exhibit 2), a Stipulation withdrawing Plaintiff's Order to Show Cause #3 (ECF 42) (Exhibit 3) to compel Interior Management I, Inc. and Interior Management LLC to respond to a Subpoena and Subpoena Duces Tecum (Exhibit 4), a Stipulation withdrawing the Subpoena and Subpoena Duces Tecum served on defendant (Exhibit 5) and a Stipulation withdrawing the Subpoena and Subpoena Duces Tecum served on non-party Waldman, Hirsch & Company, LLP (Exhibit 6), all without prejudice to the rights which will ensue if judgment is entered again in favor of plaintiff in this action and as set forth in paragraph 5 below. The Stipulations in Exhibits 1 to 6 are referred to collectively herein as "the Stipulations."

2. The fully signed Stipulations shall be held in escrow by plaintiff's attorneys pending the payment due in paragraph 3(a) being honored. Once the payment due in paragraph 3(a) is honored, Plaintiff's counsel shall file the Stipulations with the County Clerk except that Plaintiff's counsel shall submit the Stipulation Vacating the Reduced Judgment to be 'so ordered' by Justice David B. Cohen, or other Justice of the Court to whom this action may have

been assigned, and to then file the 'so ordered' Stipulation with the County Clerk. If the payment due under paragraph 3(a) is not honored, and should the default in making the payment due under paragraph 3(a) not be cured as provided in paragraph 5, then Plaintiff's attorney shall not be required to release the Stipulations from escrow and plaintiff shall be entitled to enforce the Reduced Judgment.

3. Defendant agrees to pay to plaintiff in full settlement of all claims by plaintiff against the defendant the sum of \$175,000.00 to be paid as follows:

(a) \$65,000.00 to be paid on or before April 15, 2018;

(b) \$3,800.00 to be paid on or before the 15th day of each month thereafter beginning with May 15, 2018 and continuing for twenty-seven additional months through and including August 15, 2020; and

(c) \$3,600.00 to be paid on or before September 15, 2020.

4. The settlement checks shall be made payable to Jan Ira Gellis, P.C. and delivered to Jan Ira Gellis, P.C., as attorneys, to its address below so that they are received on or before the dates set forth in paragraph 1.

5. Should the defendant default in making any of these payments, plaintiff, or its counsel, shall provide defendant's counsel with written notice specifying the default. The Notice of Default may be sent by e-mail to defendant at brianm@sandemarfinishes.com and to defendant's counsel, Gary Moss, Esq. at Moss@mosskalish.com and David Gelfarb, Esq. at Gelfarb@mosskalish.com. Should the default remain uncured for seven days after defendant's counsel's receipt of said notice, plaintiff may enter judgment against the defendant for the sum of \$175,000.00, with interest from March 17, 2016, plus collection costs of 11% of then

outstanding principal, plus costs and disbursements, giving defendant credit for any payments made.

6. Upon payment of the full amount due under this Stipulation of Settlement, plaintiff will provide defendant with a file/stamped copy of the Stipulation discontinuing this action and a release in the form attached as in Exhibit 7.

7. Plaintiff hereby reserves and retains its rights pursuant to Sections 93(b) and (c) of the Workers' Compensation Law of the State of New York (WCL). Therefore, any individual or entity as covered by WCL 93(b) and (c) under policy number 23326317 may not apply for or receive a policy of insurance from plaintiff unless at the time of the application the premium balance then due is paid. Both parties acknowledge that if the New York Compensation Insurance Rating Board modifies the current outstanding premium balance of \$259,862.42 (less the anticipated Dividend of \$85,124.85) in any way, such modification will have no effect on the settlement amount due pursuant to this stipulation; however, such a modification may affect the sum that any individual or entity as covered by WCL 93(b) and (c) is required to pay for a subsequent policy of insurance obtained from the State Insurance Fund pursuant to WCL 93(b) and (c).

8. Should any payment required under this Stipulation of Settlement be dishonored, a cure can be effected only by certified check, bank check, money order, wire transfer or an attorney escrow check, in the amount required to cure the default.

9. This Stipulation of Settlement may only be changed in a writing signed by the attorneys for both parties.

10. The provisions of this Stipulation of Settlement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

11. This Stipulation of Settlement has been jointly drafted by counsel for all parties, and this Stipulation of Settlement shall not be construed in favor of or against any party based on such party's participation in the drafting and preparation of the Stipulation of Settlement.

12. This Stipulation of Settlement, the Stipulation of Discontinuance and Release to be provided constitute the entire and only agreements and understandings between the parties with respect to the subject matter hereof.

13. Undersigned counsel represent that by signing this Stipulation of Settlement that they have the authority to execute and deliver this Stipulation of Settlement, the Stipulation of Discontinuance, the Limited Release and the Stipulations in Exhibits 1 to 7 on behalf of the parties they represent.

14. This agreement constitutes the entire agreement by and between plaintiff and defendant regarding the subject matter of this Stipulation of Settlement and may only be modified by a written instrument signed by both parties. This agreement will supersede any and all prior verbal or written agreements between Plaintiff and Defendant.

15. A facsimile or electronic copy shall be deemed an original.

16. This agreement may be signed in counterparts, all of which shall constitute one and the same agreement.

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