

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X Index No.

BRIAN VILLANUEVA,

Plaintiff,

-against-

COMPLAINT

FFO GROUP, LLC, PHILIP FALCONE, *Individually*, and
LISA FALCONE, *Individually*,

**PLAINTIFF DEMANDS
TRIAL BY JURY**

Defendants.

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Plaintiff BRIAN VILLANUEVA, by and through his attorneys, Nisar Law Group, P.C., hereby complains of Defendants, upon information and belief as follows:

NATURE OF THE CASE

- 1. Plaintiff complains pursuant to 42 U.S.C. § 1981 and the New York City Human Rights Law, New York City Administrative Code § 8-107, *et seq.* (“NYCHRL”), and seeks damages to redress the injuries he has suffered as a result of being **Unlawfully Retaliated Against.**
- 2. Plaintiff also asserts a claim for **breach of contract** under New York common law, seeking monetary relief, including interest, disbursements and costs, due to Defendants’ failure to abide by the terms of an agreement entered into between the parties.

JURISDICTION AND VENUE

- 3. Jurisdiction of this Court is proper under 28 U.S.C. §§ 1331 and 1343.
- 4. The Court has supplemental jurisdiction over Plaintiff’s claims brought under city law and common law pursuant to 28 U.S.C. § 1367.
- 5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) as it is a judicial district in which all defendants reside.

PARTIES

6. At all times relevant, Plaintiff BRIAN VILLANUEVA (“Plaintiff”) was and is a resident of the State of New York and Kings County.
7. At all times relevant, Defendant FFO GROUP, LLC (“FFO GROUP”) was and is a domestic limited liability company duly existing pursuant to, and by virtue of, the laws of the State of New York.
8. At all times relevant, Defendant PHILIP FALCONE (“PHILIP FALCONE”) was and is a co-owner of Defendant FFO GROUP.
9. At all times relevant, Defendant LISA FALCONE (“LISA FALCONE”) was and is a co-owner of Defendant FFO GROUP.
10. Defendants FFO GROUP, PHILIP FALCONE, and LISA FALCONE shall be herein referred to collectively as “Defendants.”

MATERIAL FACTS

11. The claims brought in the instant action are for unlawful retaliation and breach of contract. First, however, some background is given for context.
12. On November 6, 2019, Plaintiff filed an action in U.S. District Court for the Southern District of New York bearing the case number 1:19-cv-10307 (JMF) (the “lawsuit”). Plaintiff thereafter filed an amended complaint in the lawsuit on December 16, 2019 (at ECF #6).
13. In brief, the facts which formed the basis for the claims raised in the lawsuit were that Plaintiff had been hired as a chef for Defendants and had been caused to suffer an unlawful hostile work environment on the basis of his race (Asian) and on the basis of his association with a black person which culminated in a constructive discharge, as well as

being unlawfully retaliated against. Plaintiff also brought claims under the Fair Labor Standards Act and New York Labor Law arising from alleged non-payment of owed wages.

14. As to the allegations surrounding the existence of a hostile work environment, Plaintiff alleged, in pertinent part, that Defendants acquiesced to and encouraged an unlawful hostile work environment in which Plaintiff's Asian race was mocked in that the accent and tone of Asians' speech was imitated in a stereotypically destructive manner and jokes were made about Asians eating dogs in Plaintiff's known presence. Plaintiff also alleged that Defendant LISA FALCONE referred to his girlfriend (who is black) as a "chocolate-covered marshmallow," said that she (Defendant LISA FALCONE) was surprised the girlfriend "speaks well and seems educated" (despite being black), and thereafter used the n-word in describing the girlfriend to Plaintiff, culminating in Plaintiff suffering a constructive discharge.
15. The lawsuit was ultimately resolved between the parties via a private settlement agreement (attached hereto as Exhibit 1). The terms of this settlement included a payment by Defendants to Plaintiff in the amount of \$60,000 within 30 days of the date Plaintiff executed the agreement and sent it to Defendants' counsel (Section 1.2). As part of the consideration for Defendants entering into that agreement, Plaintiff agreed to dismiss, with prejudice, all claims against Defendants which were raised in the lawsuit (Section 4). Defendants signed the agreement on March 15, 2020; Plaintiff signed on May 17, 2020, and it was supplied to Defendants' counsel that same day (i.e., March 17, 2020). As such, per the agreement, funds were due to be paid to Plaintiff no later than April 16, 2020. The lawsuit was dismissed with prejudice by order of that Court on

March 27, 2020.

16. To date, Defendants have violated, and continue to violate, the terms of the agreement by refusing to pay any funds pursuant to it. This constitutes a breach of contract.
17. Furthermore, Plaintiff alleges here that Defendants' continuous and willful violations of the payment provisions of the agreement constitute unlawful retaliation. This is evidenced by Defendants' rationale for non-payment, as well as their prior threats for retaliation and actual acts of retaliation against Plaintiff.
18. First, Defendants' rationale for non-payment has been that Defendants simply don't have the funds to pay. In fact, on April 14, 2020, Defendants (through counsel) stated that they would not be making payment by the due date (of April 16, 2020) and it was because Defendant PHILIP FALCONE doesn't have the money. This issue was revisited on April 28, 2020, and it was again stated that Defendants (through counsel) wouldn't be paying because Defendant PHILIP FALCONE lacked the funds. However, on this date (April 28, 2020), the issue of enforcement of the settlement agreement was also discussed, to which it was emphasized by Defendants that no lawsuit could be commenced in light of New York State courts not allowing the filing of any new lawsuits due to Covid-19. (This prohibition was thereafter lifted effective May 25, 2020).
19. However, Defendants' averment that they have no money is simply not believable. Upon information and belief, Defendant PHILIP FALCONE is a billionaire and is the founder and chief investment officer of Harbinger Capital (a multi-billion-dollar hedge fund). It was also reported in the Wall Street Journal that in June 2019, Defendants PHILIP and LISA FALCONE sold their Upper East Side townhouse for a then-New York City record of approximately \$80 million. Nevertheless, because Defendants have placed their

finances squarely at issue with respect to their reasoning for non-payment, Defendants' liquidity will be discoverable.

20. Second and furthermore, Defendants have a history of threatening retaliation or actually engaging in retaliation against Plaintiff, which notably took the form of threatening to *reveal* that Plaintiff was a pedophile and/or a terrorist (of which he is neither) if he commenced/ continued with the lawsuit.
21. The lawsuit itself and the fact that Plaintiff took issue with Defendants' actions and conduct particularly incensed Defendants, namely Defendant PHILIP FALCONE. This anger and desire to retaliate against Plaintiff manifested primarily in threats that if any legal action was commenced (or if any proceeded forward) that Defendants would cast him as a sex offender and/ or a terrorist, and weaponize Defendant PHILIP and LISA FALCONE's youth daughters to assist in this.
22. In fact, prior to the lawsuit having been filed, a letter of representation was sent to Defendants in late-August 2019. In response, Defendant PHILIP FALCONE emailed Plaintiff and wrote:


"I am also in [the] process of retaining a professional investigation unit, Bo Dietl Investigations, Inc. with whom I have cc'd, to potentially interview the children to ascertain whether there was any issue with Mr. Villanueva during their study periods when they were often alone with him in the home."

"The children" to whom Defendant PHILIP FALCONE referenced were his two youth daughters. Also, as stated, CC'd on this email was Bo Dietl—the former New York City police officer-turned-private investigator who previously worked for Fox News and was allegedly hired by former chairman and CEO Roger Ailes to investigate and discredit some of the women who had accused network executives (including himself) of sexual harassment.

Near the end of this email, Defendant PHILIP FALCONE also wrote:

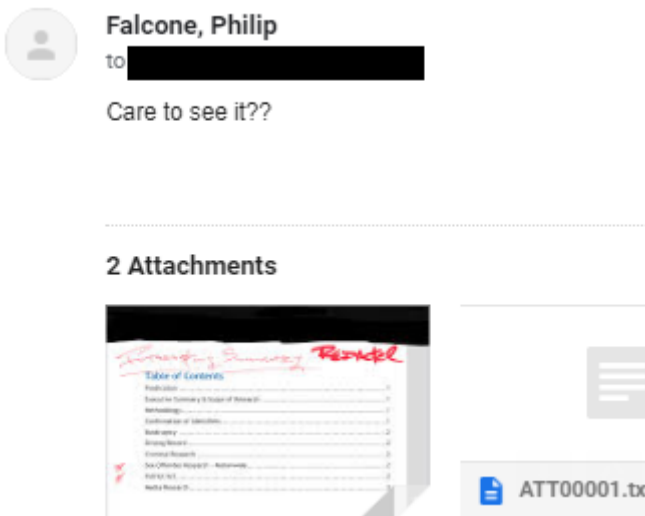
“I can say that if any litigation includes anything with respect to my children, [you] will realize that [you] picked the fight with the wrong guy.”

23. Plaintiff did not respond to this email.
24. Thereafter, on October 1, 2019, Defendant PHILIP FALCONE called Plaintiff’s attorney on the telephone. During this conversation, Defendant PHILIP FALCONE told Plaintiff’s attorney that an investigation into Plaintiff had been completed and that he (meaning Plaintiff) “would not like what was uncovered.” When Plaintiff’s attorney asked Defendant PHILIP FALCONE to be more specific, Defendant PHILIP FALCONE demurred, instead threatening that Plaintiff would “find out.”
25. Shortly thereafter, on October 7, 2019, Plaintiff spoke with the friend of his who had originally put Plaintiff and Defendants in touch with one another about Plaintiff working for the Falcones in the job underlying the lawsuit. Specifically, this friend told Plaintiff that Defendant LISA FALCONE had contacted him (i.e., the friend) for the purpose of “getting dirt” on Plaintiff, emphasizing that she said they needed any information they had on Plaintiff.
26. As mentioned above, the lawsuit was filed on November 6, 2019.
27. That same day (i.e., November 6, 2019), Defendant PHILIP FALCONE emailed Plaintiff at 4:49 PM the following:

 **Falcone, Philip**
to [REDACTED]
Hope you are prepared... 😊

28. Plaintiff did not respond to this email. Nevertheless, the following day (i.e., on November 7, 2019), Defendant PHILIP FALCONE emailed Plaintiff at 2:16 PM. The

body of that email read: “Care to see it??” and attached was a digital photo of what appeared to be the table of contents page of a “report.” The email is below:



29. As mentioned, attached to this email was a photo, which is enlarged here:

Interesting Summary Report

Table of Contents

- Predication 1
- Executive Summary & Scope of Research 1
- Methodology..... 1
- Confirmation of Identifiers 1
- Bankruptcy 2
- Driving Record 2
- Criminal Research..... 2
- Sex Offender Research - Nationwide..... 2
- Patriot Act..... 2
- Media Research 3

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30. Plaintiff understood this to be a .jpeg of the table of contents page of a “report,” and on this page there is handwritten and underlined in red ink the words “Interesting Summary,” and in the bottom left-hand corner it read, in part: “Brian Villanueva” and was circled. This page also included two hand-written stars next to the categories “Sex Offender Research – Nationwide,” and “Patriot Act.”
31. By way of background, sex offender registration guidelines provide comprehensive federal and state law requirements in order to maintain a system for monitoring and tracking convicted sex offenders following release from incarceration into the community. Further, the U.S.A. Patriot Act (referred to shorthand as the Patriot Act) was

a law passed in 2001 in the wake of the September 11 attacks in order to combat terrorism.

32. Plaintiff understood this email to be a threat that if Plaintiff didn't drop this legal matter, Defendants would cast him as a sex offender and/ or a terrorist, which coincided with prior threats made by Defendant PHILIP FALCONE that his youth daughters would make things up about Plaintiff suggesting that he engaged in inappropriate activities of the sexual nature in their presence.
33. In essence, after Defendant PHILIP FALCONE learned that Plaintiff was standing up for his legal rights and that he was considering pursuing legal action, Defendant PHILIP FALCONE weaponized his daughters and concocted a fake story which he threatened to be delivered by them (i.e., the daughters) as an intimidation tactic in an attempt to scare Plaintiff from proceeding forward, threatening that his daughters would accuse Plaintiff (falsely it should be noted) that Plaintiff is a pedophile and engaged in inappropriate conduct of the sexual nature when their parents (i.e., Defendants PHILIP and LISA FALCONE) weren't around.
34. Plaintiff neither is nor ever has been a sex offender, nor a terrorist for that matter, and Defendants know this. Further, Plaintiff has never engaged in any inappropriate sexual conduct around anyone's children (much less the Falcones'), and the allegations and/or insinuations by Defendant PHILIP FALCONE were baseless attempts to intimidate, bully, and scare Plaintiff from pursuing legitimate legal claims against Defendants, and were retaliatory in nature.
35. The foregoing demonstrates a pattern and history of Defendants threatening and/or engaging in retaliation for accusing Defendants of discrimination, and threatening

Plaintiff to dissuade him from bringing and/or continuing a lawsuit against them, and now, to punish him for actually bringing one.

36. In sum and upon information and belief, Defendants became aware of the no-new-court filings protocol in New York State and decided to retaliate against Plaintiff via non-payment, believing that he would have no recourse to enforce his rights. *At best*, Defendants saw an opportunity to keep their money by avoiding to pay a legitimate debt owed to Plaintiff by exploiting a global pandemic, or *at worst*, Defendants engaged in another act of retaliation against Plaintiff for standing up for himself and his girlfriend against the Falcones' repeated racist actions and his thereafter pursuance of legitimate legal claims.
37. Here, the facts which form the basis for the retaliation claims demonstrate the failure to live up to the terms of the settlement agreement, which are adequately alleged. Defendants have not paid plaintiff the money for which that agreement provides. Under the circumstances and given the history of Defendants' threats and/or actions, as well as the rationale given for non-payment (which is simply unbelievable), a jury could fairly infer retaliation if the evidence sustains the facts pleaded here.
38. Plaintiff has been damaged due to Defendants' breach of contract and due to Defendants' unlawful retaliation.
39. Defendants' actions and conduct were intentional and intended to harm Plaintiff.
40. As a result of Defendants' retaliatory treatment of Plaintiff, he has suffered emotional distress.
41. As a result of the above, Plaintiff has been damaged in an amount in excess of the jurisdiction of the Court.

42. Defendants' conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law. As such, Plaintiff demands punitive damages as against all Defendants, jointly and severally.

**AS A FIRST CAUSE OF ACTION
FOR RETALIATION UNDER 42 U.S.C. § 1981**

43. Plaintiff repeats and realleges each and every paragraph above as if said paragraph was more fully set forth herein at length.
44. By the acts and practices described above, Defendants retaliated against Plaintiff for his opposition to unlawful discrimination under 42 U.S.C. § 1981.
45. Defendants acted with malice and/or reckless indifference to the statutorily protected rights of Plaintiff.
46. As a result of Defendants' retaliatory act, Plaintiff has suffered and will continue to suffer irreparable injury, emotional distress, and other compensable damage unless and until this Court grants relief.

**AS A SECOND CAUSE OF ACTION FOR RETALIATION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE**

47. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.
48. The New York City Administrative Code § 8-107(7) provides that it shall be unlawful discriminatory practice: "For an employer ... to discharge ... or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter..."
49. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code § 8-107(7) by retaliating against Plaintiff because of Plaintiff's

opposition to the unlawful employment practices of Plaintiff's employer.

AS A THIRD CAUSE OF ACTION
BREACH OF CONTRACT

50. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.
51. Plaintiff and Defendants entered into a Confidential Settlement Agreement, which constitutes an enforceable contract.
52. Plaintiff fulfilled his obligations pursuant to the terms of the contract.
53. Defendants failed to abide by their obligations under the contract.
54. As a result of Defendants' breach of the agreement, Plaintiff has suffered damages.

JURY DEMAND

55. Plaintiff requests a jury trial on all issues to be tried.

WHEREFORE, Plaintiff respectfully requests a judgment against all Defendants:

- A. Declaring that Defendants engaged in unlawful practices prohibited by 42 U.S.C. § 1981 and the New York City Human Rights Law;
- B. Awarding damages to Plaintiff for Defendants' unlawful practices and to otherwise make him whole for any losses suffered as a result of such unlawful practices, including liquidated damages and interest;
- C. Awarding Plaintiff compensatory damages for mental and emotional, distress, pain and suffering and injury to his reputation in an amount to be proven;
- D. Awarding Plaintiff punitive damages;
- E. Awarding Plaintiff attorneys' fees, costs, and expenses incurred in the prosecution of the action; and
- F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and

proper to remedy the Defendants' unlawful employment practices.

Dated: New York, New York
June 1, 2020

NISAR LAW GROUP, P.C.



By: _____

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CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release of All Claims (the “Agreement”) is entered into by and between Brian Villanueva (“Villanueva”) on the one hand, and FFO Group, LLC, Philip Falcone, and Lisa Falcone (the “Defendants”) on the other hand (collectively with Villanueva referred to herein as the “Parties”), and is made with reference to the following:

RECITALS

WHEREAS, Villanueva is a former employee of Defendants;

WHEREAS, certain disputes and controversies have arisen between the Parties with respect to Villanueva’s employment with and separation from employment from Defendants;

WHEREAS, on November 6, 2019, Villanueva filed a lawsuit in the U.S. District Court for the Southern District of New York entitled *Brian Villanueva v. FFO Group, LLC, Philip Falcone, individually, and Lisa Falcone, individually*, No. 1:19-cv-10307 (the “Action”), in which Villanueva raised various allegations and brought certain legal claims. Villanueva filed an Amended Complaint on December 16, 2019;

WHEREAS, Defendants deny that they committed any wrongful acts and also deny they have violated any law or any regulation or committed any act that caused Villanueva damage or injury and further deny that Villanueva has been injured, harmed, or damaged;

WHEREAS, without admitting the validity of or any liability for the claims asserted by Villanueva against Defendants with respect to the Action, and any purported claim, both real and potential, it is the intention of the Parties hereto to settle, release and dispose of, fully and completely, any and all disputes, claims, demands and causes of action arising out of, connected with, or incidental to the dealings between Defendants on the one hand and Villanueva on the other, including, without limitation to, any and all disputes, claims, demands and causes of action that have arisen or could arise in connection with the Action as they pertain to Defendants;

WHEREAS, the Parties have agreed to resolve the Action according to the terms and conditions set forth in this Agreement; and,

NOW, THEREFORE, in consideration of the foregoing recitals, and in consideration of the terms and conditions as set forth below, Villanueva and Defendants have entered into this Agreement as follows:

1. Settlement, Compensation and Scope of Release.

1.1 Settlement. Upon the execution of this Agreement and the Parties’ compliance with the terms and conditions herein, and in full settlement of the Action against Defendants, Villanueva agrees not to pursue any and all disputes, claims, demands and causes of action that have arisen or could arise against Defendants.

1.2 Settlement Funds. Defendants agree to pay Villanueva the total lump sum of Sixty Thousand Dollars and Zero Cents (\$60,000.00) (the “Settlement Funds”). The Settlement Funds shall be paid as follows:

(i) one check in the amount of Thirty-Nine Thousand Two Hundred Twenty-Seven Dollars and Eighty-Eight Cents (\$39,227.88) made payable to “Brian Villanueva,” representing settlement for emotional distress damages. Defendants will issue an IRS Form 1099 to Villanueva for this amount (said funds shall be listed in Box 3 [“Other Income”]). Villanueva agrees to provide a completed IRS Form W-9 to Defendants at the time of the delivery of this Agreement executed by him; and

(ii) one check in the amount of Twenty Thousand Seven Hundred Seventy-Two Dollars and Twelve Cents (\$20,772.12) made payable to “Nisar Law Group, P.C.” (“Nisar Law Group”), counsel for Villanueva in the Action. Defendants will issue an IRS Form 1099 to Nisar Law Group for this amount. Nisar Law Group agrees to provide a completed IRS Form W-9 to Defendants at the time of the delivery of this Agreement executed by him.

The Settlement Funds will be delivered to Villanueva’s counsel—to wit, Casey Wolnowski, Esq., Nisar Law Group, P.C., 570 Lexington Avenue, 16th floor, New York, NY 10022—within thirty (30) calendar days of the date this agreement is executed by Villanueva and sent to Defendants’ counsel—to wit, Alexander Spiro, Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, Fl. 22, New York, NY 10010—along with the necessary IRS Forms W-9.

1.3 Scope of Release. For purposes of this Agreement, “Claims” shall mean any and all past or present disputes, claims, demands, causes of action, suits, debts, liens, liabilities, damages, penalties, fines, losses and expenses of any kind or nature whatsoever, whether known or unknown, foreseen or unforeseen, patent or latent, with the exception of any claims that may be brought in connection with enforcing the terms and conditions of this Agreement.

1.4 No Admission of Liability. This Agreement is the result of a compromise and for the purpose of settling disputed claims and shall not at any time or for any purpose constitute the evidence of or be considered or deemed any admission of liability or wrongdoing on the part of any party hereto.

2. Release of Claims. Except for the obligations undertaken in this Agreement, Villanueva hereby fully and forever releases Defendants and its current or former parents, subsidiaries, affiliates, divisions, insurers, re-insurers, officers, employees (including but not limited to Philip Falcone and Lisa Falcone), directors, investors, attorneys, stockholders, agents, successors, assignees, and representatives (collectively, “Releasees”) from any and all claims, actions, suits, losses, rights, damages, costs, fees, expenses, accounts, demands, obligations, liabilities, and causes of action of every character, nature, kind or description whatsoever, known or unknown, foreseen or unforeseen, and suspected or unsuspected, arising out of, or relating to any act or omission whatsoever arising from, occurring during or related in any manner to Releasees.

3. Among other things, Villanueva hereby releases fully and forever all claims against the Releasees including without limitation, claims arising out of the Action, and claims under any

state or federal law or regulation, including 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1870, the Americans with Disabilities Act of 1990 as amended, the Americans with Disabilities Act Amendments Act of 2008, the Age Discrimination in Employment Act, as amended, the Older Workers Benefit Protection Act, the Fair Labor Standards Act of 1938 as amended by the Equal Pay Act of 1963, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, the Civil Rights Act of 1991, the Genetic Information Nondiscrimination Act of 2008, the Lilly Ledbetter Fair Pay Act of 2009, the New York State Human Rights Law, the New York City Human Rights Law, the New York Labor Law, the New York Wage Theft Prevention Act, the New York Codes, Rules and Regulations, the U.S. Patriot Act, the Sarbanes-Oxley Act of 2002, the Dodd–Frank Wall Street Reform and Consumer Protection Act, and any other federal, state or local civil rights, harassment (including, but not limited to, race discrimination and associational race discrimination), disability, discrimination, retaliation, or any theory of contract, criminal, arbitral or tort law. This also includes a release by Villanueva of any claims for wages, benefits, penalties, breach of contract, wrongful discharge, violation of public policy, intentional or negligent infliction of emotional distress, negligence, negligent investigation or supervision, fraud, loss of consortium, and any other claims relating to or arising out of the relationship between the Parties and any alleged injuries Villanueva may have suffered arising out of that relationship up to and including the date Villanueva executes this Agreement.

Notwithstanding the foregoing, this release is not intended to affect and does not release claims that cannot be released as a matter of law. Any such term or condition shall be void to the extent that it prohibits or otherwise restricts Villanueva from: (i) initiating, testifying, assisting, complying with a subpoena from or participating in any manner with an investigation conducted by the appropriate local, state, or federal agency; or (ii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which he may be entitled.

4. Dismissal of the Entire Action. As part of the consideration for Defendants entering into this Agreement, Villanueva agrees to dismiss, with prejudice, all claims against Defendants in the Action. Villanueva agrees to take any and all steps necessary to dismiss his claims against Defendants in the Action, with prejudice, including executing the Stipulation of Dismissal With Prejudice following execution of this Agreement by all parties. Said Stipulation is attached hereto as Exhibit A and made a part hereof. Defendants will likewise execute the attached Stipulation of Discontinuance With Prejudice.

4.1 No Other Claims. Villanueva affirms that he has no pending claims, suits, or charges against Defendants other than those raised in the Action.

5. Miscellaneous Provisions.

5.1 No Admission of Liability. The Parties acknowledge and agree that this Agreement does not constitute an admission of liability or wrongdoing of any nature whatsoever by any of the Parties, and that this Agreement shall not be used as evidence of any liability or wrongdoing for any purpose whatsoever except as may be necessary to enforce the terms and conditions of this Agreement.

5.2 All Wages Will Have Been Paid. Villanueva acknowledges that upon receipt of the Settlement Funds, he will have been fully compensated for all labor and services performed for Defendants and will have been reimbursed for all business expenses incurred on behalf of Defendants through the date he signed this Release, and that Defendants will not owe Villanueva any expense reimbursement amounts or any wages, including any vacation, paid time off, or sick pay.

5.3 Work-Related Injuries. Villanueva acknowledges and agrees that he has not experienced a job-related illness or injury for which he has not already filed a workers' compensation claim.

5.4 Tax Liability/Effect of Payment. Villanueva understands and agrees that he is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and payment of the Settlement Funds. Villanueva agrees to indemnify and hold harmless Defendants and any person or entity affiliated with Defendants from any tax liability or penalties that may arise from this payment. Villanueva further acknowledges that neither Defendants, nor any of its representatives or attorneys, have made any promise, representation or warranty, express or implied, regarding the tax consequences of any consideration paid to Villanueva pursuant to this Agreement. Villanueva further acknowledges that Defendants have no obligation to, and shall not, indemnify or defend him in any tax proceedings or from any tax consequences that could result from payments made in accordance with this Agreement.

5.5 No Re-Employment. Villanueva agrees that he will not at any future time knowingly seek employment, re-employment, or an independent contractor relationship with Defendants and/or its parent(s), subsidiaries, successors, or any related entities. Villanueva further agrees that Defendants and/or its parent(s), subsidiaries, successors, or any related entities will have no legal obligation to employ Villanueva in the future and shall not be liable for any damages now or in the future because they have refused to employ Villanueva for any reason whatsoever. Further, Villanueva agrees that should he make an application for employment and be re-hired, he may immediately be terminated by Defendants and/or its parent(s), subsidiaries, successors, or any related entities for no reason or any reason whatsoever.

5.6 Non-Disparagement. Villanueva agrees not to directly or indirectly take, support, encourage or participate in any activity or attempted activity which in any way would disparage Releasees. Villanueva agrees not to write or speak about Releasees in negative terms or otherwise including, but not limited to, any events or circumstances Villanueva alleges or believes to have occurred during his employment with Defendants, including claims arising out of, alleged to arise out of, or which could have been brought as part of the Action. Likewise, Philip Falcone and Lisa Falcone (both individually and together) agree not to directly or indirectly take, support, encourage or participate in any activity or attempted activity which in any way would disparage Villanueva. Philip Falcone and Lisa Falcone both agree not to write or speak about Villanueva in negative terms or otherwise including, but not limited to, any events or circumstances Philip Falcone or Lisa Falcone allege or believe to have occurred during his employment with Defendants.

5.7 Neutral Reference. Villanueva shall direct any and all employment-related inquiries to Adriana Sisto, or her successor, who shall respond to any and all inquiries as they relate to Villanueva by only confirming Villanueva's dates of employment and last position held.

5.8 Disclosing the Terms and Conditions of this Agreement. Villanueva agrees that, except as required by law or regulation, he will not, at any time, discuss or disclose (including, without limitation, any member of the media or by posting) or otherwise publicize the negotiation or terms of this Agreement (including, without limitation, the monetary components of this Agreement), or the underlying facts and circumstances to the claims raised in the Action, except with his spouse (if applicable), attorneys and/or financial advisors, and only after informing them of his confidentiality obligations and only to the extent necessary to enforce the terms and conditions of this Agreement, or as otherwise required by law, or pursuant to a valid subpoena, discovery notice, demand, or Court order or process, except to the extent provided in Section 5.9 below.

5.9 Disclosures Permitted under this Agreement. Villanueva, his attorneys and/or financial advisors may disclose the financial and tax related terms and conditions of this Agreement to Villanueva's insurers, auditors, accountants, attorneys, representatives of the Internal Revenue Service, the Franchise Tax Board or any other agency responsible for the collection of local, state or federal taxes to the extent necessary for tax and tax related purposes, or as otherwise required by law or legal process.

5.10 Confidential Information. Except as provided in Section 5.9 above, Villanueva shall not, at any time during or after the term of this Agreement, in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, corporation, partnership, association, governmental agency or other entity, or use for Villanueva's own benefit or the benefit of any person, firm, corporation, partnership, association, governmental agency or other entity, and not for the benefit of Defendants, its subsidiaries or its affiliates, any Confidential Information or any other confidential or proprietary information concerning Defendants, its subsidiaries or its affiliates. For purposes of this Agreement, the term "Confidential Information" shall include, without limitation, the following types of information or material, both existing and contemplated, regarding Defendants or its parents, subsidiaries, direct and indirect affiliated corporations and other entities: corporate information, including plans, strategies, policies, resolutions, drawings, designs, proposals and any litigation or negotiations; marketing information, including marketing and sales plans, strategies, methods, customer and/or supplier information, customer contracts, pricing information, prospects or market research data; financial information, including cost and performance data, debt arrangement, equity structure, investors and holdings; operational and scientific information, including trade secrets, confidential processes, specifications, expertise, techniques, inventions, concepts, ideas and technical information; and personnel information, including personnel lists, resumes, personnel data, organizational structure, compensation structure and performance evaluations.

5.11 Enforcement. The Parties specifically agree that the confidentiality and non-disclosure provisions contained in this Agreement are material terms, and that any disclosure of any Confidential Information or the terms of this Agreement by Villanueva or any other person bound by these confidentiality conditions and/or non-disclosure provisions shall constitute a material breach of this Agreement. In the event it is proven that Villanueva has breached the

obligation of the confidentiality provisions contained herein, Defendants will suffer damages in an amount which will be impractical or extremely difficult to ascertain, and Villanueva hereby acknowledges and agrees that any breach of this provision will cause damage to Defendants in an amount or amounts difficult to ascertain. Accordingly, in addition to any other relief to which Defendants may be entitled, they shall be entitled to injunctive relief as may be ordered by any court of competent jurisdiction to prevent violation of this provision, without proof of actual damages.

5.12 Entire Agreement. This Agreement constitutes the final and entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous negotiations, discussions, agreements and understandings of the Parties, whether oral or written, with respect to such subject matter.

5.13 Severability. The Parties agree and acknowledge that this Agreement shall be governed by and construed in accordance with the laws of the State of New York, and that if any provision of this Agreement is determined to be illegal or unenforceable, such determination shall not affect the balance of this Agreement, which shall remain in full force and effect and such invalid provision shall be deemed severable.

5.14 Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon the Parties hereto and their respective legal representatives, including the Parties' successors and assigns, past and present parents, subsidiaries, affiliates, predecessors, successors, assigns, officers, directors, employees, attorneys, agents, representatives, heirs, executors, guardians ad litem and administrators, and each of them.

5.15 Authority. Each of the Parties represents and warrants that its respective signatory has full authority to bind each of them to the terms and conditions of this Agreement. All business entities executing this Agreement represent and warrant that their signatories' authority has been validly obtained in accordance with the applicable articles of incorporation and bylaws and the laws of the state in which the entity is incorporated, if necessary.

5.16 No Liens or Encumbrances. Villanueva and Villanueva's counsel expressly represent and warrant that Villanueva and Villanueva's counsel have not assigned or transferred or purported to assign or transfer to any person, firm, corporation, or other entity any claim, demand, right, damage, liability, debt, account, action, cause of action, or any other matter released herein. Villanueva and Villanueva's counsel expressly represent and warrant that there is no lien, writ or other encumbrance upon the Settlement Funds.

5.17 Jointly Negotiated. Each of the Parties acknowledges that this Agreement was jointly negotiated and reviewed and approved by them and their respective attorneys of record. The Agreement shall not be construed against any party solely by virtue of any party having drafted this Agreement.

5.18 Applicable Law. This Agreement shall be deemed to have been executed and delivered in the State of New York, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with, and governed by, the laws of the State of New York.

5.19 Villanueva acknowledges and understands that the Agreement as set forth herein is intended to be legally binding and enforceable. Villanueva acknowledges that he is entering into this Agreement voluntarily and has hereby been informed of his right to consult with legal counsel of his own choosing and has been advised to do so before executing this Agreement. Villanueva acknowledges that he has consulted with his attorneys and has received all of the advice he deems appropriate before entering into this Agreement.

5.20 This Agreement is binding on Villanueva and his successors, assigns, heirs, executors, administrators, and legal representatives.

5.21 Consideration and Revocation Periods. The Parties agree that they are entering into this Agreement willingly and without any coercion or duress. Prior to signing this Agreement, Villanueva has considered the terms or conditions of confidentiality of the underlying facts and circumstances of the allegations of discrimination for at least twenty-one (21) days, and such terms or conditions are the preference of the Parties.

For a period of seven (7) days following Villanueva's execution of this Agreement, Villanueva may revoke this Agreement, and the Agreement shall not become effective or be enforceable until such revocation period has expired. Villanueva may only revoke this Agreement in writing by promptly delivering to Defendants, through its counsel, a written revocation.

[Signatures on following page]


IN WITNESS HEREOF, the subscribing parties hereby agree to the above terms:

**THIS AGREEMENT AND GENERAL RELEASE INCLUDES
A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

Dated: _____

Brian Villanueva

Dated: 03/15/2020



Philip Falcone, individually, and on behalf of FFO Group, LLC

Dated: 03/15/2020

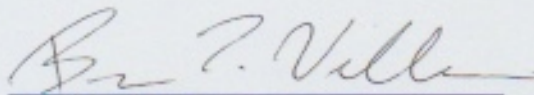


Lisa Falcone

IN WITNESS WHEREOF, the subscribing parties hereby agree to the above terms:

**THIS AGREEMENT AND GENERAL RELEASE INCLUDES
A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

Dated: MARCH 17, 2020



Brian Villanueva

Dated: _____

Name:

On behalf of FFO GROUP, LLC

Dated: _____

Philip Falcone

Dated: _____

Lisa Falcone