

**and ATTORNEY GENERAL OF THE STATE OF NEW YORK
LABOR & CIVIL RIGHTS BUREAU**

IN THE MATTER OF THE INVESTIGATION OF LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK, of

H+ THE HIP HOP DANCE CONSERVATORY
FOUNDATION, and SAFI THOMAS

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW
§ 63(15)

AOD No. 23-061

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to New York Executive Law § 63(12) to determine whether H+ The Hip-Hop Dance Conservatory Foundation (“H+”) and Safi Thomas (collectively referred to herein as the “Respondents”) engaged in activity in violation of the New York State Human Rights Law (“NYSHRL”), New York Executive Law § 296 *et seq.*, New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code § 8-107(1)(a), Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(2)(a)(1), the Fair Labor Standards Act, 29 U.S.C. 203 *et seq.* (“FLSA”), and New York Labor Law §§ 191, 652(1), and whether a civil proceeding or action for any such violation should be instituted against Respondents pursuant to New York Executive Law § 63(12).

This Assurance of Discontinuance (“AOD”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and the Respondents.

FINDINGS

1. H+ is a not-for-profit hip-hop dance company that conducts dance training, dancer intensives, repertory performances, in New York City.
2. Safi A. Thomas is the Founder and Artistic Director of H+.

3. As part of its business, prior to the Covid-19 pandemic, H+ offered dance classes (held 6 to 7 days per week), summer and winter intensive courses (a two- or eight-week full-time dance program), produced repertory productions, and ran various programs to provide free services to dancers.
4. These programs included DanceMart (a grocery supplement program), SPA (a health and wellness service), and Pimp My Style (a media services program).
5. Each program was run by H+ members, who were responsible for obtaining sponsors and were required to spend a significant amount of time running events but were not paid for the work they performed.
6. Overall, members performed extensive work for the benefit of the company, including teaching classes, attending think tank sessions, planning and staffing all H+ events, attending rehearsals, performing in H+ exhibitions and shows, setting up and cleaning up at H+ exhibitions and shows, recruiting sponsors, and assisting in various other administrative tasks.
7. No H+ member was paid for any of the work they were required to perform for the benefit of H+.
8. H+ sells tickets to its performances but does not compensate any of the performers or members who provide costumes, create sets, design choreography, lead rehearsals, sell tickets, set up or clean up.
9. Despite being told that H+ is an educational institution, no member has ever graduated from the program and Thomas does not help any dancers obtain paid jobs outside of H+.
10. Company profits are used to pay the living expenses of the "artistic echelon," a term Thomas uses to refer to himself and the other people with leadership roles in the company.

The members of the Artistic Echelon are Safi Thomas, Porshia Derival, Yvonne Chow, Yasmine Fequiere all of whom live together in an apartment paid for with H+ funds.

11. Because Thomas and the other members of the “artistic echelon” were the primary beneficiaries of all H+ members’ labor, the members were misclassified by H+ as apprentices and students. The members should have been classified as employees instead.
12. Thomas made women uncomfortable, including by lecturing them about their sexuality and personal relationships and encouraging them to be more sexually available, including towards him.
13. There was no anti-discrimination or anti-harassment policy at H+ at any time, and there was no complaint process to receive and review allegations of discrimination or harassment.
14. Over the course of its investigation, the OAG interviewed numerous former employees who were misclassified as members of the Respondents; issued a subpoena to the Respondents; reviewed documents provided by the Respondents; identified approximately twenty potential claimants; and took sworn testimony from Mr. Thomas.
15. Mr. Thomas and H+ do not contest the findings contained within this AOD.
16. Based on the foregoing, the OAG has concluded that Respondents engaged in persistent and repeated illegality in violation of the Fair Labor Standards Act, 29 U.S.C. 203 *et seq.* (“FLSA”) and New York Labor Law §§ 191, 652(1).
17. Based on the foregoing, the OAG has concluded that Respondents singled out women for worse treatment than men based on their gender. Respondents engaged in persistent and repeated illegality in violation of the New York State Human Rights Law, N.Y. Exec. L. § 296 *et seq.*

18. For purposes of resolving the OAG's inquiry, Respondents have agreed to enter into this AOD.

19. The OAG finds the relief and agreements contained in this AOD appropriate and in the public interest. THEREFORE, the OAG is willing to accept this AOD pursuant to Executive Law §63(15), in lieu of commencing a statutory proceeding for violations Executive Law §63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties:

RELIEF

Entities Bound By Assurance

20. This AOD binds Thomas, individually, and H+, and any future companies in which Thomas has a majority ownership stake, or any future non-profit corporations in which Mr. Thomas is the Director in New York State.

Compliance with the Law

21. Respondents hereby acknowledge that they understand and will comply with all applicable state and city laws pertaining to employment discrimination and harassment, including but not limited to Title VII, the NYSHRL, and the NYCHRL. Respondents acknowledge that any future violation of such laws is a violation of this AOD, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 19, in addition to any other appropriate investigation, action, or proceeding.

22. Respondents hereby acknowledge that they understand and will comply with all applicable state and city laws pertaining to labor law violations, including but not limited to the FLSA and NYLL. Respondents acknowledge that any future violation of such laws is a violation of this AOD, and that the OAG thereafter may commence the civil action or proceeding

contemplated in Paragraph 19, in addition to any other appropriate investigation, action, or proceeding.

Programmatic Relief

23. The Respondents will begin to implement the relief described in Paragraphs 24 to 29 below immediately upon the full execution of this AOD and continue to implement the relief for three (3) years from the Effective Date ("the Effective Period").
24. Respondents agree to develop a training protocol for their employees and managers on anti-discrimination workplace behaviors and compliance. Specifically, Respondents will submit the following written materials to the OAG:
- a. Anti-sexual harassment rights and responsibilities posters to be displayed for employees in an open and obvious place.
 - b. Anti-sexual harassment training to be provided to all current and future employees annually.
 - c. A harassment and discrimination complaint process for employees, including designated individuals or management to receive complaints on behalf of Respondents, and instructions to be given to management on how to handle such complaints.
 - d. A written policy confirming the Respondents' obligation not to retaliate against employees for protected activities, including raising complaints of discrimination or hostile work environment.

These proposed policies and training materials are subject to OAG approval before use and implementation.

25. Respondents will conduct a training based on the materials set forth in Paragraph 24. All existing employees will be trained on the materials within two (2) months of OAG approval of the materials set forth in Paragraph 24. Thereafter, new employees will be trained within thirty days of commencing employment with Respondents. Training will continue on an annual basis and must be provided to all employees no less than one (1) time per year throughout the effective period. For employees whose primary language is not English and who so request, Respondents will provide translation services, or separate trainings, in the applicable language, as required by law.
26. Respondents shall create and maintain records regarding all training conducted pursuant to Paragraph 25, including records of attendance.
27. Thomas further agrees to undergo training relating to an employer's obligations under the NYLL, including the obligation to pay the minimum wage pursuant to NYLL § 652(1) and 12 N.Y.C.R.R. § 142-2.1; the obligation to pay overtime pursuant to 12 N.Y.C.R.R. § 142-2.2; the obligation to pay spread of hours to employees working shifts spanning longer than 10 hours and for working multiple, split shifts in a 24-hour period pursuant to 12 N.Y.C.R.R. § 142-2.4; the obligation to maintain and preserve payroll records pursuant to NYLL § 195(4); the obligation not to discriminate on the basis of sex; the employer's obligations under the NYSHRL and NYCHRL regarding sexual harassment, and, in particular, the type of conduct that constitutes sexual harassment, the employer's obligation to have an anti-sexual harassment policy and to provide training relating to sexual harassment to employees; and the employer's obligation not to retaliate against employees for protected activity under the NYLL, the NYSHRL, and NYCHRL.

28. Within 30 days of the Effective Date, the Respondents will submit to the OAG written policies, and a plan for revising their practices and policies relating to:

- a. Respondents' classification of all persons who perform work for Respondents, including members, apprentices, students, and persons previously classified as students or managers. Respondents will submit policies listing the titles of all people who work for Respondents and state the rate of pay for every person performing work for Respondents;**
- b. Respondents' obligation to pay, at least, the minimum wage to their employees, their obligation to pay overtime wages when employees work forty or more hours in a week, and their obligation to pay an additional hour of pay when the spread of hour exceeds ten hours, or an employee works multiple, split shifts in a 24-hour period;**
- c. Respondents' obligation to provide employees, upon hiring, with a Notice of Pay Rate in the employee's primary language;**
- d. Respondent's' obligation to provide employees, on their payday, a pay statement that includes the information required under NYLL § 195(3); and**
- e. Respondents' obligation to maintain accurate and contemporaneous payroll records, including timecards and documents reflecting wages actually paid to employees, and records of employees' full names and contact information.**

29. Within 15 days of receiving notice from any persons who object to H+'s use of their personal images, H+ will remove their image from H+'s website and refrain from using their images in the future.

These proposed policies are subject to OAG approval before use and implementation.

Monetary Payment

30. Respondents agree to pay **\$10,000** (the "Settlement Funds") in resolution of the OAG's investigation, which will be paid directly to the OAG and will be used for distribution as restitution to the Respondents' current or former employees for violations of laws specified in Paragraphs 16 through 17 of this AOD.

31. The Settlement Funds shall be paid out as follows:

- a. Respondents shall pay **\$4,000** within thirty (30) calendar days of the date of execution of this agreement.
- b. Respondents shall pay **\$3,000** within 120 calendar days of the date of execution of this agreement.
- c. Respondents shall pay the remaining **\$3,000** no later than 270 calendar days from the date of execution of this agreement.

32. Payments from Respondents to the OAG must be in the form of a wire transfer, certified check, bank check, money order, or attorney's check made payable to "The New York State Department of Law," and forwarded to the New York State Attorney General's Office to the attention of:

Sandra Pullman
Senior Counsel
Civil Rights Bureau
28 Liberty Street
New York, NY 10005

The payments and all correspondence related to this AOD must reference "Assurance # 23-061."

33. The OAG has the sole discretion to determine which of the Respondents' current or former employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. Respondents agree to provide reasonable cooperation necessary to locate current and former employees who may be eligible for restitution.
34. To secure the payment described by Paragraphs 30 through 31, Respondents will execute and deliver, at the time of execution and delivery of this AOD, the accompanying Affidavit for Judgment by Confession ("Confession of Judgment," attached hereto as Exhibit A), confessing judgment individually and on behalf of H+, for the remaining Settlement Fund amount of **\$10,000**, less any amounts previously paid to the OAG by Respondents, plus collection fees of twenty two percent (22%) of any outstanding Settlement Fund amount for a collection fee total of up to \$2,200, for a total amount confessed of up to \$12,200.
35. In the event that Respondents default or fail to timely and properly make payment as set forth in Paragraph 31, the OAG shall provide Respondents thirty (30) days' written notice, by first class mail, to cure such default or failure, and upon the failure of Respondents to cure such default or failure, the OAG may file and enter the applicable Confession of Judgment, at any time, and without further notice, against Respondents less any amounts paid by Respondents pursuant to this AOD prior to the default.
36. The requirements of this AOD will expire three (3) years after the effective date, except that the OAG may, in its sole discretion, extend the AOD term upon a good faith determination that Respondents have not complied with this AOD. The OAG shall give such Respondent at least 30 days prior written notice, by first class mail, of its intent to extend the AOD (which notice shall contain the details of the basis therefor). Such

Respondent shall have the right to cure any alleged default or violation that the OAG believes is sufficient to give rise to such extension.

Non-Dischargeable Judgment

37. In the event of bankruptcy, Respondents expressly agree not to seek to discharge or extinguish the amounts owed as part of the Settlement Fund.

Monitoring and Oversight

38. **Periodic Certification of Compliance**: Respondents shall provide the OAG with a certification affirming its compliance with the requirements set forth in this AOD Paragraphs 24 to 29 (Programmatic Relief), to be submitted to the OAG within forth-five (45) calendar days of the date of execution of this agreement. This certification shall be in writing and signed by Respondents. Thereafter, a certification of compliance shall be submitted to the OAG on an annual basis for the following three (3) years. In any case, where the circumstances warrant, the OAG may require Respondents to file an interim certification of compliance upon thirty (30) days' notice.

39. **Bi-Annual Reports**: Respondents will submit biannual reports to the OAG for the next three (3) years. These reports shall include records of training they provided to their employees, information regarding any changes to their policies described in Paragraph 24, records of payments made to employees, a roster of all persons employed by Respondents including each worker's job title and a description of work performed, and a description of all discrimination or harassment complaints that were made (whether orally or in writing) and how they were handled by management.

40. Certification of Compliance on Demand: At any time through the Effective Period of this AOD, upon 30 days' written notice from the OAG, Respondents shall provide the OAG with a certification affirming its compliance with the requirements set forth in this AOD, Paragraphs 24 to 29 (Programmatic Relief).
41. Respondents expressly agree and acknowledge that a default in the performance of any obligation under this paragraph during the Effective Period is a violation of the AOD against the defaulting Respondent, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 19, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the AOD has been violated shall constitute prima facie proof of the statutory violations described in Paragraphs 16 and 17, pursuant to Executive Law § 63(15).

No Retaliation

42. Respondents agree that they shall comply with NYSHRL, NYCHRL, Title VII, FLSA, and NYLL and shall not in any manner discriminate or retaliate against any of their employees, including but not limited to employees or former employees who cooperated or are perceived to have cooperated with the OAG's investigation of this matter. Respondents agree not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the OAG's investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the NYSHRL, NYCHRL, Title VII, FLSA, and NYLL.

Ongoing Cooperation

43. Respondents agree to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this AOD. During the effective

period, Respondents agree that the OAG shall have full access to the contact information of its employees that have worked in New York State upon fifteen (15) days written notice, in order to reach them by mail, telephone, or electronic means.

Penalty for Non-Compliance

44. If an OAG inspection shows a material violation of Paragraphs 24 to 29 and Paragraph 38 to 40 of this AOD, the Respondent responsible for the violation agrees to pay \$25,000.00 in liquidated damages for each violation, separate and apart from any other penalty or damages associated with the violation, provided that prior to any assessment of liquidated damages, Respondents shall be notified of the violation in writing, effective two days after mailing via first class mail, after which Respondents shall have ten (10) days to cure the violation.

MISCELLANEOUS

Subsequent Proceedings

45. Respondents expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this AOD, for violations of the AOD, or if the AOD is voided pursuant to Paragraph 47, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this AOD;
- b. the OAG may use statements, documents or other materials produced or provided by the Respondents prior to or after the effective date of this AOD except for settlement communications;

- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondents irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue;
- d. evidence of a violation of this AOD shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

46. If a court of competent jurisdiction determines that the Respondents have violated the AOD, the Respondents shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this AOD, including without limitation legal fees, expenses, and court costs.

Representations and Warranties

47. The OAG has agreed to the terms of this AOD based on, among other things, the representations made to OAG by Respondents and the OAG's own factual investigation as set forth in Findings, Paragraphs 1 to 19 above. Respondents represent and warrant that they have not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents are later found to be inaccurate or misleading, this AOD is voidable against that Respondent by the OAG in its sole discretion.

48. No representation, inducement, promise, understanding, condition, or warranty not set forth in this AOD has been made to or relied upon by Respondents in agreeing to this AOD.

49. Respondents represent and warrant, through the signatures below, that the terms and conditions of this AOD are duly approved, and execution of this AOD is duly authorized.

General Principles

50. Unless a term limit for compliance is otherwise specified within this AOD, the Respondents' obligations under this AOD are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.
51. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Respondents violate the AOD after its effective date.
52. Any failure by the OAG to insist upon the strict performance by Respondents of any of the provisions of this AOD shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all the provisions of this AOD to be performed by the Respondent.
53. This AOD may not be amended except by an instrument in writing signed on behalf of the parties to this AOD.
54. In the event that any one or more of the provisions contained in this AOD shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this AOD.
55. Respondents acknowledge that they have entered this AOD freely and voluntarily and upon due deliberation with the advice of counsel.
56. This AOD shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
57. The AOD 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.

58. The Effective Date of this AOD shall be December 18, 2023. The Effective Period shall be for three years after the effective date.

59. All notices, reports, requests, and other communications to any party pursuant to this AOD shall be in writing and shall be directed as follows:

From Respondents to the OAG:

New York State Office of the Attorney General
Sandra Pullman, Senior Counsel, Civil Rights Bureau
28 Liberty Street, New York, NY 10005
or Sandra.pullman@ag.ny.gov

From the OAG to Thomas and H+

Safi Thomas
101 W 23rd Street, Suite 164
New York, NY 10011
hdcdance@gmail.com

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

60. This AOD may be electronically signed, and any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

61. This AOD 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, this Assurance is executed by the parties hereto on this 15 day of December 2023.

LETITIA JAMES
Attorney General of the State of New York

By: Sandra Pullman / S.V.C.

Sandra Pullman
Senior Counsel
Civil Rights Bureau
Office of the New York State Attorney General
28 Liberty Street
New York, New York 10005

Dated: December 21, 2023

By: Safi Thomas

Safi Thomas, Individually
and on behalf of:
H+ | The Hip Hop Dance
Conservatory Foundatoin

Dated: December 15, 2023

By: Yvonne Chow

Yvonne Chow
on behalf of:
H+ | The Hip Hop Dance
Conservatory Foundation

Dated: December 15, 2023

By: Pershia Derival

Pershia Derival
on behalf of:
H+ | The Hip Hop Dance
Conservatory Foundation

Dated: December 15, 2023

By: Yasmine Fiquiere

Yasmine Fiquiere
on behalf of:
H+ | The Hip Hop Dance

Conservatory Foundation

Dated: December 15, 2023

EXHIBIT A

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR & CIVIL RIGHTS BUREAUS

IN THE MATTER OF THE INVESTIGATION OF
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

OF

AFFIDAVIT OF
CONFESSION OF
JUDGMENT

H+| The HIP HOP DANCE CONSERVATORY
FOUNDATION and SAFI THOMAS

SAFI THOMAS being duly sworn, deposes and says the following:

1. I am the majority owner and operator of H+ THE HIP HOP DANCE CONSERVATORY FOUNDATION (“H+”) and have authority to sign on behalf of H+ and myself.

2. I reside at the following address: 88 Oak Street #1, Bayonne, NJ 07002.

3. I hereby confess judgment against ~~H+~~ and myself pursuant to CPLR § 3218 in favor of the People of the State of New York, in the sum of ten thousand dollars (\$10,000), less any amounts previously paid, plus collection fees of twenty two percent (22%) of any outstanding Settlement Fund amount for a collection fee, which was signed on December 15, 2023 (AOD No. 23-061). Upon default of the Assurance of Discontinuance and filing of an Attorney Affirmation that such default occurred and not been cured within five business days, I hereby authorize the People of the State of New York to enter judgment against H+ and myself in the sum of \$10,000 dollars, plus costs, interest, and late fees, as set forth in the Assurance of Discontinuance, and less any and all payments made toward the above settlement amount, and/or credits made prior thereto.

4. I hereby authorize entry of said judgment in the County of New York, State of New York.

