

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

THE SPOTTED PIG HOLDING COMPANY
LLC and KENNETH FRIEDMAN

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

AOD No. #19-136

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 The Spotted Pig Holding Company LLC (“the Spotted Pig”) and Kenneth Friedman (collectively referred to herein as the “Targets”) have engaged in unlawful sex discrimination based on a hostile work environment and retaliation in violation of New York State Human Rights Law (“NYSHRL”), New York Executive Law § 296 et seq. and New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code § 8-107(1)(a), and to determine whether a proceeding or action should be instituted against the Targets pursuant to New York Executive Law § 63(12) for violating these provisions of state and city human rights laws.

This Assurance of Discontinuance contains the findings of OAG’s investigation and the relief agreed to by OAG and the Targets.

FINDINGS

Introduction and Background

1. The Spotted Pig is a corporation that operates a restaurant located in the West Village of New York City. The Spotted Pig is owned, in large part, and operated by Friedman.

Both Targets are employers within the meaning of the New York State Human Rights Law and the New York City Human Rights Law.

2. In December 2017, the New York Times published an exposé of sexual harassment by Friedman. In May 2018, CBS's "60 Minutes" featured additional allegations by former employees of Friedman. The majority of these incidents took place at the Spotted Pig. The OAG then commenced an investigation of the Targets.

3. Over the course of the investigation, the OAG interviewed more than three dozen former employees of the Spotted Pig and Friedman and issued a subpoena to the Targets. The OAG reviewed documents and testimony provided by Friedman and his business partner, April Bloomfield, and reviewed extensive allegations of sexual harassment against Friedman going back nearly a decade. The findings herein do not constitute admissions, and this AOD is not to be used by any third parties against Targets.

Hostile Work Environment & Retaliation

4. Based on its investigation, the OAG has concluded that since at least 2005:
 - a. The Spotted Pig maintained a hostile workplace where female employees were subjected to severe and pervasive incidents of unwanted touching and unwelcome sexual advances by Mario Batali, a celebrity chef and an investor of the Spotted Pig, and Friedman;
 - b. The Targets exposed their employees to a sexualized workplace where employees witnessed inappropriate sexual encounters;
 - c. The Spotted Pig maintained a hostile work environment where Friedman harassed female employees on multiple occasions via sexually explicit comments and repeated sexual advances made to them during and after work;

- d. The Targets failed to systematically address or take action against such unlawful behaviors in response to complaints made to them, and in fact discouraged the reporting of such complaints; and
- e. The Targets retaliated against an employee who complained about harassment and an employee related to the complainant, by terminating them after the complaint was made, citing pretextual reasons for termination.

Unwanted touching

5. The OAG found that Batali regularly groped female employees and grabbed their breasts and buttocks on multiple occasions.

6. The OAG found that Friedman also groped female employees and forcibly kissed them on multiple occasions.

Unwelcome advances

7. Friedman also sent several women who worked for him unwelcome text messages and emails. Friedman requested that female employees send nude photos, which they refused to do.

Sexualized workplace

8. The OAG found that employees also witnessed sexual activity and assaults by Batali involving third parties at the Spotted Pig. One employee saw Batali prop up and reach in between the legs of a nearly unconscious woman on the third floor of the Spotted Pig. After seeing this on the security camera, the employee rushed in to separate them. Another former employee walked in on Batali performing oral sex on a woman on the third floor of the Spotted Pig, in a semi-public space where staff members regularly went to obtain supplies, take breaks, and count money.

Verbal harassment

9. The OAG found that Friedman and Batali often made sexually explicit comments to female employees at work. Batali told one employee to “sit on [his friend]’s face,” when she served them at the Spotted Pig. Friedman repeatedly told a female employee that he had a threesome with her mother. Friedman also commented on the bodies of female employees. One employee reported that Friedman looked down her shirt and said he believed that she wore push-up bras because she had stretch marks. Another employee reported that Friedman told her not to worry, that he liked “big women,” after touching her waist and feeling her Spanx. Another employee said that Friedman cornered her and said that her jeans were so low that he could see her pubic hair. Another reported that Friedman told her that she was the best bartender because “people want to fuck you.”

Lack of Recourse

10. The OAG investigation found that while several employees complained to the Targets or a Spotted Pig manager regarding Friedman or Batali’s harassing conduct, insufficient action was taken to rectify the conduct or prevent it from happening again. Eventually, Friedman told Batali that he was no longer welcome at the Spotted Pig because of his drunken behavior and failure to pay his bill.

11. The OAG found that multiple employees reported to Friedman, Bloomfield, and Spotted Pig restaurant managers that Batali groped or harassed them, but they were generally told “that’s just Mario being Mario,” and no further action was taken in response to Batali’s sexual harassment.

12. The OAG also found that, for the most part, except for a short period during 2015, the Spotted Pig maintained no human resources department, no sexual harassment policy, and no

process by which employees could report complaints about Friedman other than complaining to the General Manager, Friedman himself, or Bloomfield. Despite her ownership and managerial role in the company, Bloomfield took no action to mitigate or prevent future harassment.

13. The OAG also found that, while Mr. Friedman and Ms. Bloomfield retained a human resources consultant for a few months in 2015, Friedman terminated the consultant's contract because she assisted an employee of the Spotted Pig in filing a harassment complaint.

Retaliation

14. The OAG found that Friedman regularly threatened to retaliate against employees if they crossed him or were disloyal in any way. One manager elevated a complaint about Friedman (unrelated to sexual harassment), and Friedman immediately ordered the manager to fire the complaining employee. After another employee left the Spotted Pig, Friedman called her new boss and complained about the terms of her departure, causing her to lose her new job before she even started.

15. One employee was fired in retaliation for complaining that Friedman groped her buttocks and groin. The employee filed a formal complaint, alleging that Friedman groped her buttocks and groin. Three months later, the Spotted Pig fired the employee and her husband, who also worked at the restaurant, for pretextual reasons.

16. Based on the foregoing, the OAG has concluded that Targets engaged in persistent and repeated illegality in violation of NYSHRL, N.Y. Exec. Law § 296 et seq., and NYCHRL, N.Y.C. Admin. Code § 8-107(1).

17. For purposes of resolving the OAG's inquiry, Targets have agreed to enter into this Assurance.

18. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance 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

19. This Assurance binds Friedman, individually, and the Spotted Pig, its principals, beneficial owners, officers, and shareholders.

Compliance with New York State and City Human Rights Laws Governing Anti-Discrimination Employment Practices

20. Targets hereby acknowledge that they understand and will comply with all applicable state and city laws, including but not limited to the NYSHRL and the NYCHRL. Targets acknowledge that any future violation of such laws is a violation of this Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 15, in addition to any other appropriate investigation, action, or proceeding.

Programmatic Relief

21. Targets will begin to implement the relief described in paragraphs 21 to 24 below immediately upon the full execution of this Assurance (“the effective date”), and continue to implement the relief for three (3) years from the effective date (“the effective period”).

22. Targets agree to revise their policies and practices and train their employees and managers on NYSHRL and NYCHRL anti-discrimination workplace behaviors and compliance. Specifically, Targets will submit the following proposed written materials within 30 days of the effective date to the OAG:

- a. Anti-sexual harassment and discrimination workplace policy to be provided to all employees in accordance with state and city standards.
- b. Anti-sexual harassment rights and responsibilities poster to be displayed for employees in English and Spanish in an open and obvious place.
- c. Anti-sexual harassment rights and responsibilities notices or fact sheets to be distributed to all current and future employees.
- d. Anti-sexual harassment in-person training module to be provided to all current and future employees annually.
- e. A harassment and discrimination complaint process for employees, including designated individuals or management to receive complaints on behalf of the Spotted Pig, and instructions to be given to management on how to handle such complaints.
- f. A written policy confirming the Spotted Pig's and Friedman's obligation not to retaliate against employees for protected activity, including raising complaints of discrimination or hostile work environment.

These proposed policies, notices and trainings must be approved by the OAG prior to implementation and training.

23. Targets will disseminate the written policies set forth in paragraph 21 within thirty (30) days of OAG approval. Dissemination shall include posting the written policies in the Spotted Pig's offices; incorporating the written policies in the Spotted Pig's handbook; and sending the policies to current Spotted Pig employees by email and/or notifying employees by text messages that new policies have been issued and will be distributed in hard copy to employees with their

paychecks by regular mail or in person during employees' in-service. The written policies must be disseminated in English, Spanish, and if employees so request, a different language.

24. The Spotted Pig will conduct a training based on the materials set forth in paragraph 21. All existing employees will be trained on the materials within two (2) months of OAG approval of the materials set forth in paragraph 21. Thereafter, new employees will be trained within thirty days of commencing employment with Targets. 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. Trainings shall be in person and must cover each of the topics set forth in paragraph 20. For employees whose primary language is not English and who so request, the Spotted Pig will provide translation services, or separate trainings, in the applicable language.

25. The Spotted Pig shall create and maintain records regarding all training conducted pursuant to paragraph 21, including records of attendance.

Friedman Relinquishes Role

26. Friedman agrees to step down as an operator of the Spotted Pig and will no longer have a role in the Spotted Pig's operations or management. He will have no supervisory authority over any employees, and he will have no involvement in hiring, firing, promotion, retention, or any other personnel decisions. Within ten (10) days of the Effective Date, the foregoing will be communicated to existing employees.

Friedman Shares Profits from the Spotted Pig With Complainants

27. Friedman agrees to share a percentage of future Spotted Pig profits with former employees who have complained of sexual harassment to the OAG.

28. Upon execution of the Agreement, Mr. Friedman acknowledges the following schedule for distribution of profits to the OAG for distribution to the former employees, and a

schedule for annual statements and certifications to reflect profits of the Spotted Pig and funds received by Friedman from the Spotted Pig.

- a. Profit Sharing: Mr. Friedman will transfer 20% of any profit received from the Spotted Pig from the date of execution of this contract, for a ten (10) year term, up to and including the month of December of the year 2029. The term “profit” as used herein encompasses any payments made from the Spotted Pig to Friedman, including but not limited to funds received, bonus distributions, revenue checks, business expense reimbursements, repayment of loans or monies owed to Friedman, etc. It shall also include any payments or distributions to Friedman resulting from the sale or closure of the Spotted Pig, as well as monies distributed to any relative or current or former spouse of Friedman. Friedman shall not distribute monies from the Spotted Pig to a third party for the purpose of returning those funds to himself, outside of this sharing agreement. All payments made from the Spotted Pig to Friedman shall be subject to this 20% sharing arrangement and shall be paid out to the OAG in the below-described manner.

- b. Pay: Friedman shall pay 20% of all profits received from the Spotted Pig, in accordance with the following payment schedule for the qualifying months subject to this profit share arrangement:

Date of Payout	Qualifying months of monies covered
July 1, 2020	Date of Execution – June 30, 2020
January 1, 2021	July 1, 2020 – December 31, 2020
July 1, 2021	January 1, 2021 – June 30, 2021
January 1, 2022	July 1, 2021 – December 31, 2021
January 1, 2023	January 1, 2022 – December 31, 2022
January 1, 2024	January 1, 2023 – December 31, 2023
January 1, 2025	January 1, 2024 – December 31, 2024
January 1, 2026	January 1, 2025 – December 31, 2025
January 1, 2027	January 1, 2026 – December 31, 2026

January 1, 2028	January 1, 2027 – December 31, 2027
January 1, 2029	January 1, 2028 – December 31, 2028
January 1, 2030	January 1, 2029 – December 31, 2029

All payouts should be made to the OAG within fifteen (15) days from the designated date of payout. Such payment must be made to the OAG 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 OAG will distribute such funds at its discretion to former employees of Friedman or the Spotted Pig who have been identified by the OAG as having experienced harassment and/or retaliation, as described herein. The distribution of the funds shall be at the sole discretion of the OAG. Such distribution shall not give rise to a private right of action against the OAG or any recipient of these funds. In consideration for receiving any profits pursuant to this agreement, each employee shall execute a written release of claims to Targets.

- c. Periodic Profit/Loss Statements and Certification of Accounting: The Spotted Pig shall provide the OAG with statements reflecting the profits and losses of the Spotted Pig on an annual basis for the following ten-year distribution term, up to and including December 31, 2029. Such profit and loss statements shall be submitted no later than January 15th for the preceding calendar year. A certification affirming a Certified Public Account’s review of the profits of the Spotted Pig, in

addition to a statement of monies Friedman received from the Spotted Pig, shall also be submitted on an annual basis for the following ten-year term, no later than January 15th for the preceding calendar year. The accountant's certification shall include a description of the documents reviewed in order to determine the Spotted Pig's profits and the amount of any monies paid to Friedman.

- d. OAG Right to Inspect: The OAG reserves the right to inspect all records reflecting the financial earnings of the Spotted Pig and Friedman, at any given time in the following ten-year distribution term. If Targets fail to comply with an inspection of financial records within ten (10) days of OAG request, the OAG will notify the Targets of their failure, and Targets will be granted one (1) opportunity to cure such failure and submit all requested financial statements within the following ten (10) days. If the Targets fail to submit records for inspection after such notice to cure, or fail to submit records for inspection in response to any request thereafter, a penalty of \$25,000.00 per occurrence will be paid by Targets to the OAG.

The Spotted Pig Prohibits Batali from Operations

29. The Spotted Pig agrees that Batali will not have a role in the Spotted Pig's operations or management. Batali will have no supervisory authority over any employees, and he will have no involvement in hiring, firing, promotion, retention, or any other personnel decisions. Within ten (10) days of the Effective Date, the foregoing will be communicated to existing employees.

Monetary Payment

Payments to OAG

30. Targets agree to pay **\$240,000.00** in resolution of the OAG's investigation, which will be paid directly to the OAG and will be used for distribution as restitution to current or former employees of the Spotted Pig or Friedman for violations of laws specified in this Assurance.

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

- a. Targets shall pay **\$48,000.00** within fourteen (14) business days of the date of execution of this agreement.
- b. Targets shall pay **\$48,000.00** on or before July 1, 2020.
- c. Targets shall pay **\$48,000.00** on or before January 1, 2021.
- d. Targets shall pay **\$48,000.00** on or before July 1, 2021.
- e. Targets shall pay **\$48,000.00** on or before October 1, 2021.

32. Payments from Targets 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 payment and all correspondence related to this Assurance must reference "Assurance #19-136."

33. The OAG has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. Targets

agree to provide reasonable cooperation necessary to locate current and former employees who may be eligible for restitution. In consideration for receiving any monetary award pursuant to this agreement, each employee shall execute a written release of claims to Targets.

34. To secure the payment described by paragraphs 28 through 29, Targets will execute and deliver, at the time of execution and delivery of this Assurance, the accompanying Affidavits for Judgment by Confession (“Confessions of Judgment,” attached hereto as Exhibit A and Exhibit B), confessing judgment individually and on behalf of the Spotted Pig, for the remaining Settlement Fund amount of **\$240,000.00**, plus collection fees of twenty two percent (22%) of any outstanding Settlement Fund amount for a collection fee total of up to \$52,800.00, for a total amount confessed of up to \$292,800.00.

35. In the event that Targets default or fail to timely and properly make payment as set forth in paragraphs 29 to 30, the OAG shall provide Targets thirty (30) days’ written notice, by first class mail, to cure such default or failure, and upon the failure of Targets to cure such default or failure, the OAG may file and enter the applicable Confessions of Judgment, at any time, and without further notice, against Targets less any amounts paid by Targets pursuant to his Assurance prior to the default.

36. The requirements of this Assurance, other than those in paragraphs 26 to 27, will expire three (3) years after the effective date, except that the OAG may, in its sole discretion, extend the Assurance term upon a determination that Targets have not complied with this Assurance.

Non-Dischargeable Judgment

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

Monitoring and Oversight

38. **Periodic Compliance Reports:** The Spotted Pig shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraphs 21 to 24 (Programmatic Relief), to be submitted to the OAG by February 28, 2020. This report shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance. This report shall be signed by the Spotted Pig. Thereafter, a report 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 the Spotted Pig to file an interim report of compliance upon thirty (30) days' notice.

39. **Periodic Certification of Compliance:** The Spotted Pig shall provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs 20 to 24 (Programmatic Relief), to be submitted to the OAG by January 6, 2020. This certification shall be in writing and be signed by the Spotted Pig. 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 the Spotted Pig to file an interim certification of compliance upon thirty (30) days' notice.

40. **Bi-Annual Reports:** The Spotted Pig 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 21, and a description of all discrimination or harassment complaints that were made (whether orally or in writing) and how they were handled by management.

41. **Certification of Compliance on Demand:** At any time through the effective period of this Assurance , and upon thirty (30) days' written notice from the OAG, the Spotted Pig shall

provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs 20 to 24 (Programmatic Relief).

42. The Spotted Pig expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph during the Effective is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 15, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 15, pursuant to Executive Law § 63(15).

No Retaliation

43. Targets agree that they shall comply with NYSHRL and NYCHRL 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. Targets 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 and NYCHRL.

Ongoing Cooperation

44. Targets agree to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this Assurance. During the effective period, Targets agree that the OAG shall have full access to the contact information of its employees in order to reach them through by mail, telephone, or electronic means.

Penalty for Non-Compliance

45. If an OAG inspection shows a material violation of paragraphs 20 to 24 of this Assurance, Targets agree 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, Targets shall be notified of the violation in writing, effective two days after mailing via first class mail, after which Targets shall have ten (10) days to cure the violation.

MISCELLANEOUS

Representations and Warranties

46. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by Targets and the OAG's own factual investigation as set forth in Findings, paragraphs 4 to 15 above. Targets represent and warrant that they have not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Targets are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

47. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Targets in agreeing to this Assurance.

48. Targets represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

49. Unless a term limit for compliance is otherwise specified within this Assurance, the Targets' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve

Targets of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

50. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Targets violate the Assurance after its effective date.

51. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

52. In the event that any one or more of the provisions contained in this Assurance 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 Assurance.

53. Targets acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

54. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

55. The Assurance 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.

56. The effective date of this Assurance shall be December 18, 2019. The effective period shall be for three years after the effective date.

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

From Targets 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 Targets :

Kenneth Friedman
Spotted Pig Holding Company
561 Hudson St.
New York, NY 10014


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

58. This Assurance 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 18th day of December, 2019.

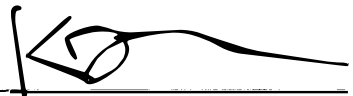
LETITIA JAMES
Attorney General of the State of New York

By: _____


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

Dated: December 18, 2019

By: _____


Kenneth Friedman
Spotted Pig Holding Company LLC
561 Hudson Street Ste 54
New York, NY 10014

Dated: December 18 2019