

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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PHYLLIS DAMANTE,

Plaintiff,

-against-

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT  
OF EDUCATION, JO ANN CHESTER AND MIKE  
KOZLOWSKI,

Defendants.

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**STIPULATION AND ORDER  
OF SETTLEMENT AND  
DISCONTINUANCE**

10 Civ. 2594 (ENV)(JMA)

**WHEREAS**, plaintiff commenced an action by filing a complaint on March 18, 2010 in the Southern District of New York with docket number 10 CV 2461(WHP), which was transferred to the Eastern District of New York on June 8, 2010 and assigned docket number 10 CV 2594(ENV)(JMA);

**WHEREAS**, plaintiff filed an Amended Complaint in the Eastern District of New York, alleging discrimination based on a disability under the Americans with Disability Act and New York State and City Human Rights Laws;

**WHEREAS**, defendants have denied any and all liability arising out of plaintiff's allegations; and

**WHEREAS**, the parties now desire to resolve the issues raised in each litigation in order to effect a global resolution without further proceedings and without admitting any fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. Plaintiff hereby agrees to withdraw, with prejudice, and without costs, expenses, or fees in excess of the amounts specified in paragraph "2" below, all the claims asserted against the City, the Department of Education ("DOE"), Jo Ann Chester and Mike Kozlowski, their successors or assigns, and all present and former officials, employees, representatives and agents of the City, DOE, Jo Ann Chester and Mike Kozlowski ("Released Parties") from any and all claims, liabilities and/or causes of action which Plaintiff has or may have against any of the Released Parties based on any act, omission, event or occurrence concerning plaintiff's employment with the DOE occurring from the beginning of the world up through and including the date hereof, including, without limitation, any and all claims which were or could have been alleged by Plaintiff in this action arising out of the events alleged in the complaint herein, including all claims for attorneys' fees and costs.

2. In consideration for the above, the City of New York hereby agrees to pay the plaintiff two hundred thousand dollars ("\$200,000") in full satisfaction of all claims other than back wages, including claims for alleged physical, emotional and psychiatric injuries, attorneys fees and costs and disbursements of this action.

3. In further consideration for the above, the DOE agrees to pay plaintiff the gross amount of fifty thousand dollars ("\$50,000"), less all lawful and applicable deductions and withholdings, representing back wages for the period of January 2, 2007 through December 1, 2010.

4. The back pay sum of \$50,000 represents salary that plaintiff would have earned from January 2, 2007 to December 1, 2010 and it is the understanding of the parties that plaintiff will receive appropriate service credit for this period for pension purposes. Plaintiff

agrees that she will be responsible for the associated contributions to her pension if they were not automatically deducted from the back pay sum.

5. Plaintiff further agrees that she will irrevocably resign her employment, effective December 1, 2010 by submitting a resignation letter to the DOE.

6. Plaintiff shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a release based on the terms of paragraphs "2" through "5" above and an affidavit concerning liens.

7. By executing this agreement, plaintiff acknowledges that in accordance with the Older Workers Benefit Protection Act (29 U.S.C. §626), (i) she enters into this Stipulation voluntarily and with full understanding and knowledge of its consequences; (ii) she has been advised to consult with an attorney before executing this Stipulation; (iii) she has been provided with at least a twenty-one (21) day period to review and consider whether to sign this Stipulation and (iv) she has been advised that he has seven (7) days following his execution to revoke it (the "Revocation Period").

8. This Stipulation will not be effective and enforceable until the Revocation Period has expired. Such revocation shall only be effective if an originally executed written notice or revocation is delivered to defendants' counsel on or before 5:00 p.m. on the seventh day after the date of plaintiff's execution of this Stipulation. If so revoked, this Stipulation shall be deemed to be void ab initio and have no force or effect.

9. Plaintiff further acknowledges that she has carefully read and fully understands all the provisions of this Stipulation, and has thoroughly reviewed any releases and waivers contained herein, understood the effect of said releases and waivers before executing this Stipulation, and has been allowed a reasonable period of time within which to consider its terms.

Plaintiff also acknowledges that he has executed this Stipulation freely, voluntarily, and with full knowledge of its terms and consequences, that she has been represented by counsel and that her counsel has discussed the terms of this Stipulation with plaintiff.

10. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York or the City of New York, or any other rules, regulations or bylaws of any department or subdivision of the City of New York and/or the DOE. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

11. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York and/or the DOE.

12. In the event that a taxing authority or a court determines the payment made pursuant to this Stipulation and Order of Settlement and Discontinuance by the City of New York City or the DOE is subject to personal income tax, any taxes, interest or penalties determined to be owed shall be the sole and complete responsibility of plaintiff, and plaintiff and his counsel shall not have a claim, right, or cause of action against the Released Parties or any former, present, or future officials, agents, employees, or representatives of the Released Parties DOE, or their successors and assigns, on account of such taxes. The Released Parties and their former, present, or future officials, agents, employees, or representatives or their successors and assigns, do not waive any claims they might have should any taxing authority proceed against them on account of any moneys paid under this Stipulation and Order of Settlement and Discontinuance.

13. This Stipulation and Order of Settlement and Discontinuance contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and


Order of Settlement and Discontinuance regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

Dated: New York, New York  
December 20, 2010

MICHAEL J. BORRELLI  
Borrelli & Associates, P.L.L.C.  
One Old Country Road, Suite 347  
Carle Place, N.Y. 11514  
Tel. No. (516) 248 - 5550  
Fax No. (516) 248 - 6027

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
100 Church Street, Room 2-111  
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Jzinaman@law.nyc.gov

By:   
MICHAEL J. BORRELLI

By:   
JAMIE M. ZINAMAN  
Assistant Corporation Counsel

SO ORDERED:

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U.S.D.J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
PHYLLIS DAMANTE,

Plaintiff,

-against-

**AFFIDAVIT  
CONCERNING LIENS**

10 Civ. 2594 (ENV)(JMA)

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT  
OF EDUCATION, JO ANN CHESTER AND MIKE  
KOZLOWSKI,

Defendants.  
----- X

STATE OF NEW YORK        )  
                                  : SS.:  
COUNTY OF NEW YORK    )

**PHYLLIS DAMANTE**, being duly sworn, deposes and says:

1. I am over 18 years, am the plaintiff herein and make this affidavit in connection with settlement of this action.

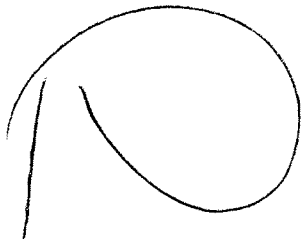
2. The City of New York has no outstanding bills or liens against me or my property for obligations owed for Parking Violations. The City of New York has no outstanding bills or liens against me or my property for obligations owed for treatment received at a New York City Health and Hospitals Corporation facility, nor for the receipt of Workers' Compensation or New York State Disability benefits, as a result of incidents underlying in this action.

3. I have never been a recipient of public assistance from the New York City Department of Social Services and do not owe child support.

*Phyllis Damante*  
\_\_\_\_\_  
PHYLLIS DAMANTE  
SS# 054-42-3240 DOB 2/11/51

Sworn to before me this  
29<sup>th</sup> day of December, 2010

NOTARY PUBLIC

*Deborah Esperanza Romero*  


**DEBORAH ESPERANZA ROMERO**  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RO6221842  
Qualified in Richmond County  
My Commission Expires May 03, 2014


**RELEASE**

**KNOW THAT I, PHYLLIS DAMANTE**, the plaintiff in the actions entitled Damante v. City of New York, et al., 10CV2594 (ENV)(JMA) in the United States District Court for the Eastern District of New York, in the United States District Court for the Eastern District of New York, in consideration of the payment by the City of New York of \$200,000 and the payment by the New York City Department of Education of the gross amount of \$50,000, less all lawful and applicable deductions and withholdings and for other good and valuable consideration, do hereby release and discharge the New York City Department of Education, the City of New York, Jo Ann Chester and Mike Kozlowski ("Released Parties"), their successors or assigns, and all past and present officials, employees, representatives and agents of the Released Parties from any and all claims, liabilities and/or causes of action concerning my employment with the DOE which were or could have been asserted by me against any of the Released Parties based on any act, omission, event or occurrence occurring from the beginning of the world up and including the date hereof, including, without limitation, any and all claims which were or could have been alleged by me in the aforementioned actions, including all claims for attorneys' fees and costs. This Release may not be changed orally. By executing this agreement, plaintiff acknowledges that in accordance with the Older Workers Benefit Protection Act (29 U.S.C. §626), (i) she enters into this Stipulation voluntarily and with full understanding and knowledge of its consequences; (ii) she has been advised to consult with an attorney before executing this Stipulation; (iii) she has been provided with at least a twenty-one (21) day period to review and consider whether to sign this Stipulation and (iv) she has been advised that he has seven (7) days following his execution to revoke it (the "Revocation Period"). This Stipulation will not be effective and enforceable until the Revocation Period has expired. Such revocation shall only be effective if an originally executed written notice or revocation is delivered to defendants' counsel on or before 5:00 p.m. on the seventh day after the date of plaintiff's execution of this Stipulation. If so revoked, this Stipulation shall be deemed to be



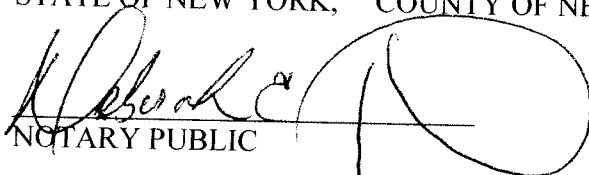
void ab initio and have no force or effect. Plaintiff further acknowledges that she has carefully read and fully understands all the provisions of this Stipulation, and has thoroughly reviewed any releases and waivers contained herein, understood the effect of said releases and waivers before executing this Stipulation, and has been allowed a reasonable period of time within which to consider its terms. Plaintiff also acknowledges that she has executed this Stipulation freely, voluntarily, and with full knowledge of its terms and consequences, that he has been represented by counsel and that his counsel has discussed the terms of this Stipulation with plaintiff.

**THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.**

  
\_\_\_\_\_  
PHYLLIS DAMANTE

IN WITNESS WHEREOF, I have executed this Release on 29<sup>th</sup> December 2010

STATE OF NEW YORK, COUNTY OF NEW YORK SS.:

  
\_\_\_\_\_  
NOTARY PUBLIC

DEBORAH ESPERANZA ROMERO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RO6221842  
Qualified in Richmond County  
My Commission Expires May 03, 2014