

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

JMC RESTAURANT HOLDINGS, LLC; and JMC
RESTAURANT HOLDINGS INTERNATIONAL, LLC,

Plaintiffs,

- against -

MARCELO PEVIDA; JIA JU TAO; JOSEPH
SILVESTRI; DOES 1-10; and ABC BUSINESS
ENTITIES 1-10,

Defendants.

FRONT STREET RESTAURANT CORP.; MARCELO
PEVIDA; and JIA JU TAO,

Third-Party Plaintiffs,

- against -

FRANK CIOLLI,

Third-Party Defendant.

Civil Action No. 14-06157-WFK-VMS

SETTLEMENT STIPULATION

(Mediator Kenneth A. Plevan)

Plaintiffs JMC Restaurant Holdings, LLC and JMC Restaurant Holdings International, LLC (“JMCI”) and Defendants Marcelo Pevida, Jia Ju Tao, Front Street Restaurant Corporation (“Defendants”) and Third-Party Defendant Frank Ciolli, stipulate and agree as follows:

1. This stipulation is executed as a tentative settlement of all claims in the above-captioned action, and is expressly subject to a further long-form settlement agreement (“Settlement Agreement”) to be executed by the parties, including, without limitation, customary confidentiality, waiver, entirety, and severability provisions, and required cooperation to execute documents and complete filings necessary to effectuate their settlement.

2. The terms of this settlement stipulation are confidential and cannot be disclosed to any person other than the mediator, the undersigned and their counsel, and 27 Old Fulton Street,

LLC (the "Landlord") (as contemplated by this stipulation), or as required by law to enforce the parties' settlement or Court order in this case.

3. For a period 60 days commencing on the date of execution of this stipulation ("Negotiation Period"), Defendants consent to Plaintiffs/Frank Ciolli and/or their assignee(s) ("JMC Parties") negotiating and entering a lease ("New Lease") with the Landlord for the real property at 1 Front Street, Brooklyn, New York ("the Property").

4. The New Lease, subject to paragraph 11a, will supersede and replace the existing lease ("Existing Lease") between Front Street Restaurant Corp. ("Front Street") and the Landlord for the Property and extinguish Front Street's rights and obligations to Landlord under the Existing Lease or assign Front Street's rights and obligations to Landlord under the Existing Lease to JMC Parties.

5. JMC Parties may negotiate and enter a New Lease with the Landlord in their sole discretion during the Negotiation Period.

6. Defendants warrant they will not encumber the Property with any debt or lien, and will not alter or impair the Property in any way or remove any equipment, fixtures, furnishings, or personal property from the Property during the Negotiation Period. Defendants' warranty is personal and does not extend to the independent actions of the Landlord or Frank Ciolli (e.g., third party services procured by Frank Ciolli in furtherance of his business at the Property.).

7. Defendants warrant they will pay September and October rent due under the Existing Lease during the Negotiation Period, provided Frank Ciolli pays rent to Front Street as required by Court order during the Negotiation Period.

8. The parties must cooperate to prepare the Settlement Agreement for final execution within the Negotiation Period.

9. If JMC Parties do not enter a New Lease with the Landlord that resolves the monetary claims by Landlord against Front Street for rent under the Existing Lease (represented by Front Street as approx. \$180,000), then there will be no settlement of any claims. The parties

reserve all rights to their claims and defenses if a New Lease is not entered between JMC Parties and the Landlord within the Negotiation Period.

10. The parties acknowledge the execution of this stipulation does not in and of itself alter any obligation of Frank Ciolli under any Court order to pay rent to Front Street during the Negotiation Period. Any such obligation will only be released by order of the Court or stipulation of the parties as set forth below.

11. If JMC Parties enter a New Lease with the Landlord that resolves the monetary claims by Landlord against Front Street for rent under the Existing Lease, then Plaintiffs, Defendants, and Frank Ciolli will settle all their disputes as follows:

- a. The parties must execute the Settlement Agreement prior to or commensurate with the execution of the New Lease;
- b. Defendants agree to the representations and warranties identified in the letter from Olivier Beabeau to Martin Shell and Henry Cittone dated March 30, 2016, specifically those at enumerated paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10;
- c. Plaintiffs release all claims, known or unknown, past, present, or future, against Defendants, Jia Cai Lewin (see condition below), Joseph Silvestri, and Knights Investment Group, LLC, and any of their principals or agents, including Hongfei Zhang, regarding this suit and arising from conduct prior to the date of this stipulation regarding the Grimaldi Marks, Front Street Restaurant Corp., the Brooklyn Restaurant, and the Shanghai Restaurant;¹

¹ Defined terms set forth in letter from Olivier Beabeau to Martin Shell and Henry Cittone dated March 30, 2016.

- d. Unless otherwise explicitly reserved herein, Plaintiffs release all persons they could have, but did not, name as a party to the suit under the facts and claims of the suit and arising prior to the date of this stipulation.
- e. Plaintiffs reserve all claims asserted or which can be asserted by them in China regarding the Shanghai Restaurant, including the pending claims filed by JMCI against Shanghai Jinghui Catering Management Co. in Shanghai, China, except for claims against Defendants, Jia Cai Lewin (see condition below), Joseph Silvestri, and Knights Investment Group, LLC, and any of their principals or agents, including Hongfei Zhang, regarding this suit and arising from conduct prior to the date of this stipulation regarding the Shanghai Restaurant;
- f. Defendants release all claims, known or unknown, past, present, or future, against Plaintiffs, Joseph Ciolli, Frank Ciolli, any company in which Joseph Ciolli or Frank Ciolli is an owner, and any past, present, and future employees of any such company(ies) regarding this suit, the Grimaldi Marks, Front Street Restaurant Corp., the Brooklyn Restaurant, and the Shanghai Restaurant;
- g. Defendants must dismiss with prejudice all claims and actions filed by one or more Defendants against Frank Ciolli, and/or any company in which Frank Ciolli is an owner, in any court, and file all necessary paperwork in all related litigation actions to effectuate the same;
- h. Frank Ciolli must dismiss with prejudice all claims and actions filed by him, and/or any company in which Frank Ciolli is an owner, in any court, against Defendants and file all necessary paperwork in all related litigation actions to effectuate the same;

- i. Defendants must cause all the security (approx. \$162,000) posted by or for Frank Ciolli in the New York landlord/tenant suit between Defendants/Front Street and Frank Ciolli to be released to Frank Ciolli, and waive all claims to the same;
- j. Defendants must convey and deliver all equipment, fixtures, furnishings, and their personal property at the Property to JMC Parties;
- k. Defendants shall convey and deliver, or cause to be conveyed and delivered, the liquor license for the Property to JMC Parties and other documents to allow JMC Parties to obtain a liquor license;
- l. Defendants must cooperate with JMC Parties to effectuate the New Lease and convey and deliver the liquor license and other property at the Property, including executing/filing all assignments, consents, or other documents necessary in JMC Parties' sole discretion to effectuate the New Lease and conveyances; and
- m. Defendants waive all right, title, interest, and claims under the Existing Lease.
- n. The parties agree not to disparage each other.

12. During the Negotiation Period, Plaintiffs may separately settle their claims against Jia Cai Lewin in their sole discretion. If Plaintiffs cannot reach a separate settlement with Jia Cai Lewin within the Negotiation Period, then they will release their claims against Jia Cai Lewin as set forth above.

13. During the Negotiation Period, the undersigned parties agree to temporarily stay all deadlines in this action. Upon execution of this stipulation, the parties will jointly request the Court postpone all deadlines by 60 days.

Court postpone all deadlines by 60 days.

PLAINTIFFS:

JMC Restaurant Holdings, LLC

JMC Restaurant Holdings International, LLC

By: _____


Joseph Ciolli, Manager

By: _____


Olivier A. Beabeau, Attorney for Plaintiffs

DEFENDANTS:

Front Street Restaurant Corp.

By: _____

Marcelo Pevida, President

Marcelo Pevida

By: _____

Marcelo Pevida, Individually

Jia Ju Tao a/k/a Tom Tao


By: _____


Jia Ju Tao a/k/a Tom Tao, Individually

By: _____
Olivier A. Beabeau, Attorney for Plaintiffs


DEFENDANTS:

Front Street Restaurant Corp.

By: 

Marcelo Pevida, President

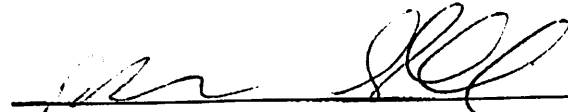
Marcelo Pevida

By: 

Marcelo Pevida, Individually

Jia Ju Tao a/k/a Tom Tao

By: _____
Jia Ju Tao a/k/a Tom Tao, Individually

By: 


Martin Shell, Attorney for Front Street Restaurant
Corp., Marcelo Pevida, Jia Ju Tao a/k/a Tom Tao


**THIRD-PARTY
DEFENDANT:**

Frank Ciolli

**THIRD-PARTY
DEFENDANT:**

Frank Ciolli

By: 
Frank Ciolli, Individually

By: 
Ken Sussmane, Attorney for Frank Ciolli



GALBUT & GALBUT, P.C.

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March 30, 2016

Via E-Mail Only

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Henry Cittance, Esq.
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hcittance@cittancechinta.com

Re: JMC Restaurant Holdings, LLC, et al. v. Pevida, et al. (Case No. 14-cv-6157); Rule 408 Settlement Communication

Dear Martin and Henry:

JMC Restaurant Holdings, LLC and JMC Restaurant Holdings International, LLC (collectively "JMC") have authorized me to offer settlement of the above-captioned litigation (the "Action") against your clients Tom Tao, Marcelo Pevida, and Front Street Restaurant Corp. (collectively "Defendants") under the following terms:

1. Defendants, individually and as owners, representatives, agents of any other person or entity, cease and desist from any use of marks identical or similar to GRIMALDI'S, GRIMALDI'S PIZZERIA, GRIMALDI'S COAL BRICK-OVEN PIZZERIA, PATSY GRIMALDI'S, PATSY GRIMALDI'S PIZZERIA, PATSY GRIMALDI'S COAL BRICK-PIZZERIA, and 格里马尔迪 (the "Grimaldi Marks") anywhere in the world;
2. Defendants, individually and as owners, representatives, or agents of any other person or entity, warrant they own no right or interest in the Grimaldi Marks anywhere in the world;
3. Defendants, individually and as owners, representatives, or agents of any other person or entity, will not apply for or enable or assist any person or entity to apply for registration of any marks identical or similar to the Grimaldi Marks;
4. Defendants, individually and as owners, representatives, or agents of any other person or entity, cease and desist from making any claim or representation of ownership or affiliation with any restaurant -- past, present, or future -- operating under any of the Grimaldi Marks;



Martin Shell, Esq.
Henry Cittone, Esq.
March 30, 2016
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5. Defendants, individually and as owners, representatives, or agents of any other person or entity, are prohibited from making any statement or inference impugning the reputation of JMC, Joseph Ciolli, Frank Ciolli, any company in which Joseph Ciolli or Frank Ciolli is an owner or any past, present, and future employees of such company, and are further prohibited from discouraging, directly or indirectly, any person from patronizing a restaurant owned or operated by JMC, Joseph Ciolli, Frank Ciolli, or any company in which Joseph Ciolli or Frank Ciolli is an owner;
6. Defendants, individually and as owners, representatives, or agents of any other person or entity, will not use or enable any person or entity to use for any purpose the history and goodwill of any restaurant affiliated with JMC or that is operating or has operated in the United States under the Grimaldi Marks;
7. Defendants, individually and as owners, representatives, or agents of any other person or entity, will not use or enable any person or entity to use the likeness, name, or image of the individual Patsy Grimaldi for restaurant services, food products, or advertising and business anywhere in the world;
8. Defendants, individually and as owners, representatives, or agents of any other person or entity, are prohibited from owning any interest in, participating in, or otherwise collaborating with and/or contributing to, the pizzeria restaurant currently operating under the marks PATSY and/or PATSY'S PIZZERIA in Shanghai, China (the "Shanghai Restaurant"), and any business affiliated with the Shanghai Restaurant anywhere in the world;
9. Within 10 days of offer acceptance, Defendants will execute a document acceptable to JMC warranting their termination of all ownership of, participation in, collaboration with, and contribution to any person or entity operating under the Grimaldi's Marks, PATSY's, PATSY'S PIZZERIA or any derivative of any of the foregoing marks, anywhere in the world, including but not limited to, the Shanghai Restaurant;
10. Defendants' covenants and representations are secured by liquidated damages of \$1,000,000 for each event of breach, and an additional \$50,000 per day for continued breaches, and Defendants waive all future claims, known or unknown, challenging the measure of liquidated damages;

Redacted



Martin Shell, Esq.
Henry Cittone, Esq.
March 30, 2016
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Martin Shell, Esq.
Henry Cittance, Esq.
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Sincerely,

A handwritten signature in black ink, appearing to read "Olivier A. Beabeau". The signature is fluid and cursive, with a large initial "O" and a long, sweeping tail.

Olivier A. Beabeau

cc: Barry M. Benjamin, Esq.
Jeremy A. Schachter, Esq.