

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AKF, INC. D/B/A FUNDKITE,

Plaintiff,

v.

Case No. 5:22-cv-00219-GTS-ATB

TBO DISTRIBUTION, LLC,
and
JAMES CLIFTON THIEBAUD,

Defendants.

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS, on February 9, 2022, TBO Distribution, LLC and AKF, Inc. d/b/a FundKite entered in a Revenue Purchase Agreement under which FundKite purchased \$165,000.00 in Receipts, as that term is defined in the Revenue Purchase Agreement, from TBO Distribution, LLC;

WHEREAS, on or about February 9, 2022, James Clifton Thiebaud executed a Guaranty of Performance of TBO Distribution, LLC's obligations under the Revenue Purchase Agreement;

WHEREAS, on March 7, 2022, Plaintiff commenced an action entitled *AKF, Inc. v. TBO Distribution, LLC, et al*, United States District Court for the Northern District of New York, Docket No.: 5:22-cv-219 (the "Action"), against the Defendants seeking money damages resulting from Defendants' breach of the Revenue Purchase Agreement in the amount of \$211,293.60, plus attorneys' fees, costs, and statutory interest;

WHEREAS, on April 13, 2022, the Defendants filed an Answer with Counterclaims against Plaintiff;

WHEREAS, the Parties desire to resolve this Action to avoid incurring further attorneys' fees and expenses and resolve all outstanding claims and potential claims in the Action;

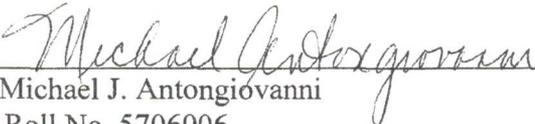
WHEREAS, the Parties executed a Confidential Settlement Agreement on July 8, 2022 that contains a nine-month settlement payment plan;

NOW, THEREFORE, in order to effectuate the Parties' confidential Settlement Agreement, it is hereby stipulated and ordered as follows:

1. The Court shall retain jurisdiction over the matter for the purpose of enforcing this Stipulation and the Parties' Settlement Agreement.
2. Plaintiffs' Claims and Defendants' counterclaims against Plaintiff, AKF, INC. D/B/A FUNDKITE, are dismissed and discontinued with prejudice as of the date this Stipulation has been executed.
3. On or before March 25, 2023, Plaintiff shall notify the Court via letter with copy to Defendants' counsel whether Defendants have timely paid the full Settlement Amount due under the Settlement Agreement.
 - a. If, on or before March 25, 2023, Plaintiff notifies the Court that the Defendants have fully and timely paid the full Settlement Amount agreed in the Parties' Settlement Agreement, the Court shall deem the matter closed and have no further jurisdiction over the matter.
 - b. If, on or before March 25, 2023, Plaintiff notifies the Court that the Defendants have defaulted under the Settlement Agreement by not timely making any Settlement Payment, Plaintiff shall annex a copy of the consent judgment, which was Exhibit 1 to the Parties' Settlement Agreement, and the Court shall enter the consent judgment in favor of Plaintiff and against the Defendants unless the default is disputed by Defendants in writing to the Court.

Dated: July 14, 2022

MEYER, SUOZZI, ENGLISH & KLEIN, P.C.

By: 
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Dated: July 17, 2022

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IT IS SO ORDERED.

Dated: August 2, 2022


Hon. Glenn T. Suddaby
Chief U.S. District Judge