

CONFIDENTIAL, FOR SETTLEMENT PURPOSES ONLY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of New York,

Index No. 451533/2019

Plaintiff,

Hon. Robert R. Reed

-against-

**Stipulation of Settlement
And Order of Dismissal**

DANIEL C. AUSTIN, SR., DANIEL C. AUSTIN, JR., DONALD
M. PFAIL, JOSEPH LODATO, MICHAEL W. MICHEL,
ANTHONY R. MORDENTE, AND VERA PRINCIOTTA,

Defendants.

This Stipulation of Settlement ("Stipulation") is made and entered into as of the 22nd day of October, 2024, by and among Defendants Daniel C. Austin, Sr., Daniel C. Austin, Jr., (the "Defendants") and the People of the State of New York ("Plaintiff") (together with Austin, Sr., and Austin, Jr., the "Settling Parties"). Plaintiff is represented by the Office of New York State Attorney General Letitia James:

WHEREAS the above-captioned action was commenced on September 3, 2019, in the Supreme Court of the State of New York (the "Action") by a Verified Complaint in which Plaintiff asserts claims against Austin, Sr., and Austin, Jr., among others, pursuant to the New York Not-for Profit Corporation Law ("N-PCL"), under Sections 715, 717, 720 and 1507; Article 8 of the New York Estates, Powers and Trusts Law ("EPTL") and the common law;

WHEREAS Austin, Sr. was employed by Lutheran All Faiths Cemetery (the "Cemetery") for nearly thirty years, and held various leadership roles, including as the Cemetery's President, Chief Executive Officer and Chairman of its Board. In 2014, he announced his retirement. The Complaint alleges that he illegally took a lump sum retirement benefit in the amount of \$900,000 and thereafter continued to remain on the Cemetery's payroll until 2019. The Complaint also alleges that during his employment, Austin, Sr. exploited his position at the Cemetery to draw fees, salaries, and loans from the Cemetery's charitable assets while ignoring his basic fiduciary obligations to manage prudently the assets under his control for the benefit of the Cemetery and its property, thereby violating his fiduciary obligations;

WHEREAS Austin, Jr. was employed by the Cemetery as a member of the Board of the Cemetery from 2006 to 2018, and he succeeded his father as the President of the Cemetery in May 2014. In August

CONFIDENTIAL, FOR SETTLEMENT PURPOSES ONLY

2018, Austin Jr. resigned from the Cemetery. The Complaint alleges that Austin, Jr. exploited his positions at the Cemetery to draw fees, salaries, and loans from the Cemetery's charitable assets while ignoring his basic fiduciary obligations to manage prudently the assets under his control for the benefit of the Cemetery and its property, thereby violating his fiduciary obligations. Austin, Jr.'s alleged wrongdoing included embezzling tens of thousands of dollars by awarding himself unauthorized bonuses as the President of the Cemetery without the Board's knowledge;

WHEREAS Austin, Sr. has appeared in the Action, has served an Answer to the Complaint, and has asserted a number of defenses to Plaintiff's claims;

WHEREAS Austin, Jr. did not answer or otherwise respond to the Complaint and was held in default pursuant to a Decision & Order filed October 22, 2020 (NYSECF No. 148);

WHEREAS, discovery proceeded in this matter, including the exchange of documents and depositions of Defendant Austin, Sr. and other parties and witnesses;

WHEREAS the Settling Parties have engaged in good faith arms-length negotiations through court-ordered mediation that led to this Stipulation, which embodies all the terms and conditions of the settlement among the Settling Parties:

WHEREAS Austin, Sr. and Austin, Jr. have agreed to enter into this Stipulation to avoid further expense, inconvenience, and the distraction of burdensome litigation, and to thereby put to rest with finality this controversy with Plaintiff;

WHEREAS, the Parties believe this Stipulation will advance the ability of the Cemetery to fulfill its mission and be in the best interest of the Cemetery's beneficiaries;

NOW, THEREFORE, it is agreed by and among the Settling Parties, in consideration of the mutual covenants contained in this Stipulation, the adequacy of which are hereby acknowledged, that all claims in the Action against Austin, Sr. and Austin, Jr. be settled, compromised and dismissed on the merits and with prejudice, and without costs as to Plaintiff or Austin, Sr. and Austin, Jr., on the following terms and conditions, each of which is material to this stipulation, and which the Parties respectfully request be so-ordered by the Court.

Stipulated Relief

Defendants agree to the following relief without admitting or denying Plaintiff's claims against them in this Action:

CONFIDENTIAL, FOR SETTLEMENT PURPOSES ONLY

5. Pursuant to EPTL §8-1.4(m) and N-PCL §714, the Defendants hereby accept a permanent bar from service as an officer, director or trustee or in any position where they have any fiduciary responsibilities for any not-for-profit or charitable organization incorporated, registered, operating or soliciting contributions in New York, or for any other individual or entity that holds charitable assets or solicits charitable contribution in the State of New York, including, but not limited to, responsibility for financial and/or management oversight of any New York charitable entity. It is further agreed that Austin, Sr. will resign from his current position as a director on the Board of Directors of Christ the King High School and, in accordance with this Stipulation, is prohibited from returning to serve on that board.

6. The Defendants hereby agree to pay restitution in the amount of \$900,000.00 (the "Settlement Amount") jointly. The Settlement Amount shall be paid to Plaintiff, who shall hold the funds in escrow for the benefit of the Cemetery's charitable beneficiaries. Defendants further agree that full payment of the Settlement Amount shall be made within 10 business days that this Stipulation is fully executed by the Settling Parties (the "Stipulation Date"), provided, however, that Plaintiff shall return the Settlement Amount to the Defendants in the event that this Stipulation is not so ordered by the Court. Plaintiff shall release the full amount of the Settlement Amount from escrow and transfer the funds to the Cemetery within 30 days of the Court's entry of this so-ordered Stipulation.

7. Dismissal of lawsuit with prejudice. In consideration of the covenants undertaken herein, Plaintiff agrees that the claims against the Defendants in this Action shall be discontinued with prejudice on the Effective Date, the date when this Stipulation is so ordered by the Court. Default judgment issued against Daniel Austin, Jr. is deemed vacated.

8. Resolution of all claims. This Stipulation, upon being so ordered by the Court, will resolve all outstanding claims by Plaintiff against the Defendants relating to the subject matter of the Action. Plaintiff hereby agrees that if this Stipulation is so ordered by the Court, and if the Defendants perform their obligations under this Stipulation, it will seek no additional recovery or restitution of any kind from the Defendants in connection with the Action.

Additional Terms and Conditions

9. The Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Stipulation or expressing any view that the Action is without a factual basis.

10. Plaintiff has agreed to the terms of this Stipulation based on, among other things, statements made by the Defendants under oath in this Action and representations to Plaintiff. To the extent

CONFIDENTIAL, FOR SETTLEMENT PURPOSES ONLY

that any material statement made by the Defendants during the course of the Action, is later found and determined by a court of competent jurisdiction to be intentionally false and misleading, this Stipulation is voidable by Plaintiff in its sole discretion.

11. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Stipulation has been made to or relied upon by the Defendants in agreeing to this Stipulation. The Defendants hereby acknowledge that they had the opportunity to and consulted with counsel in agreeing to this Stipulation.

12. In the event that one or more provisions contained in this Stipulation shall for any reason be held invalid, illegal, or unenforceable in any respect, in the sole discretion of Plaintiff, such invalidity, illegality or unenforceability shall not affect any other provisions of the Stipulation.

13. If, for any reason, this Stipulation is voided or breached, the Defendants agree that any statute of limitations or other time-related defenses applicable to the subject of this Stipulation and any claims arising from or related thereto are tolled from and after the date of this Stipulation. In the event this Stipulation is voided or breached, the Defendants expressly agree and acknowledge that the Stipulation shall in no way bar or otherwise preclude Plaintiff from commencing, conducting, or prosecuting any investigation, action or proceeding, however denominated, related to this Stipulation, against the Defendants, or from using in any way statement, document, or other materials produced or provided by the Defendants prior to or after the date of this Stipulation.

14. The Settling Parties agree that this Stipulation may be enforced by the Court and submit to its jurisdiction for that purpose. In the event that a court of competent jurisdiction determines that the Defendants breached this Stipulation, the Defendants shall pay to Plaintiff the cost, if any, of such determination and of enforcing this Stipulation including, without limitation, legal fees, expenses and court costs.

15. Plaintiff finds this relief and the agreements contained in this Stipulation appropriate and in the public interest. Accordingly, Plaintiff accepts this Stipulation in settlement of the claims asserted against the Defendants in its Complaint. This Stipulation shall be governed by the laws of the State of New York without regard to any conflict of laws and principles.

16. Except as set forth above, the Settling Parties agree to bear their own fees, cost and expenses to this matter.

17. Nothing contained herein shall be construed to deprive any person of any private right under the law.

CONFIDENTIAL, FOR SETTLEMENT PURPOSES ONLY

18. The terms of this Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts to be performed wholly within the State of New York.

19. This Stipulation may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or electronic transmission in portable document from (PDF) of an executed counterpart of this agreement is as effective as delivery of an originally executed counterpart of this Stipulation.

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

To the Attorney General:

Sandra Pullman
Office of the Attorney General
28 Liberty Street, 20th floor
New York, New York 10005
E-mail: Sandra.Pullman@ag.ny.gov
Cc: Emily.Stern@ag.ny.gov

Mihea Kim
Office of the Attorney General
28 Liberty Street, 20th floor
New York, New York 10005
E-mail: Mihea.Kim@ag.ny.gov
Cc: Emily.Stern@ag.ny.gov

To Defendant Daniel C. Austin, Sr.:

Harris Papas, Attorney for Daniel C. Austin, Sr.
Connors and Sullivan
7408 Fifth Avenue, Suite 2
Brooklyn, New York 11209
E-mail: Harris.Papas@ConnorsandSullivan.com

To Defendant Daniel C. Austin, Jr.:

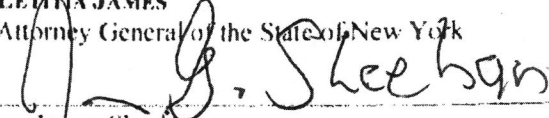
17 Huyler Road
Setauket, NY 11733

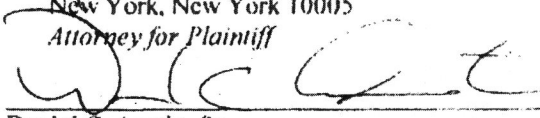
22. This Stipulation may not be amended except by an instrument in writing signed on behalf of all the Parties to this Stipulation.

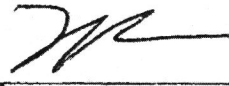
IN WITNESS WHEREOF, this Stipulation is executed by the parties hereto on October 22,
2024 (the "Effective Date").

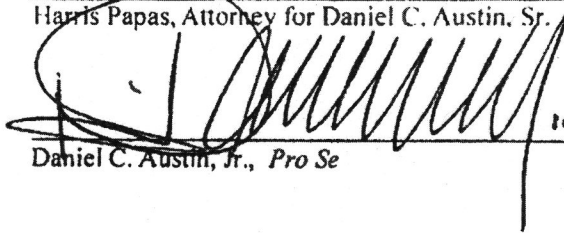
CONFIDENTIAL FOR SETTLEMENT PURPOSES ONLY

LEITIA JAMES
Attorney General of the State of New York

By: 
James Sheehan
Chief, Charities Bureau
28 Liberty Street
New York, New York 10005
Attorney for Plaintiff


Daniel C. Austin, Sr.


Harris Papas, Attorney for Daniel C. Austin, Sr.


Daniel C. Austin, Jr., Pro Se 10/17/2024

SO ORDERED:



Hon. Robert R. Reed
Justice, Supreme Court of the State of New York

11/20/24

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of New York,

Index No. 451533/2019

Plaintiff,

**STIPULATION OF
SETTLEMENT AND
ORDER OF DISMISSAL**

-against-

DANIEL C. AUSTIN, SR., DANIEL C. AUSTIN, JR., DONALD M.
PFAIL, JOSEPH LODATO, MICHAEL W. MICHEL, ANTHONY R.
MORDENTE, AND VERA PRINCIOTTA,

Defendants.

ANTHONY R. MORDENTE,

Third-Party Plaintiff,

-against-

WELLS FARGO BANK, N.A., WELLS FARGO ADVISORS,
LLC, WELLS FARGO ADVISORS FINANCIAL NETWORK
LLC, WILLIAM J. BURKE, SR., WILLIAM J. BURKE, JR.,
THE BURKE GROUP, and THE LUTHERAN CEMETERY
d/b/a LUTHERAN ALL FAITHS CEMETERY,

Third-Party Defendants.

This Stipulation of Settlement (“Stipulation”) is made and entered into as of the 22nd day of October, 2024, by and between Defendant Anthony R. Mordente (“Defendant”) and the People of the State of New York, by Attorney General Letitia James (“Plaintiff” and, together with Defendant, the “Parties”):

WHEREAS, the above-captioned action was commenced on September 3, 2019, in the Supreme Court of the State of New York by a Verified Complaint in which Plaintiff asserts claims against Defendant pursuant to the Not-For-Profit Corporation Law (“N-PCL”) §§ 715, 717, 720

and 1507, Article 8 of the Estates, Powers and Trusts Law (“EPTL”) and the common law (the “Action”);

WHEREAS, Defendant and his law firm was employed by Lutheran All Faiths Cemetery (the “Cemetery”) from 1990 to 2020 and Defendant held various roles in the management and governance of the Cemetery, including as a director and outside legal counsel, Secretary and Acting Treasurer of the board and Chief Executive Officer. Defendant left the employment and board of the Cemetery in 2020. The Complaint alleges that in his roles at the Cemetery, Defendant exploited his positions to draw fees, salaries, and loans from the Cemetery’s charitable assets while ignoring his basic fiduciary obligations to manage prudently the assets under his control for the benefit of the Cemetery and its property, thereby violating his fiduciary obligations;

WHEREAS, Defendant has appeared in the Action, has served an Answer to the Verified Complaint, denying all the material allegations in the Complaint, has asserted a number of affirmative defenses to Plaintiff’s claims, and has commenced the above-captioned Third-Party Complaint;

WHEREAS, discovery proceeded in this matter, including the exchange of documents and depositions of Defendant and other parties and witnesses;

WHEREAS, as directed by the Court, Defendant, through his counsel, and Plaintiff, through its counsel, have engaged in good faith, arms-length negotiations that led to this Stipulation, which embodies all of the terms and conditions of the settlement among the Parties;

WHEREAS, Defendant, without admitting liability, has agreed to enter into this Stipulation to avoid further expense, inconvenience, and the distraction of burdensome litigation, and to thereby put to rest with finality this Action;

WHEREAS, the Parties believe this Stipulation will advance the ability of Lutheran All Faiths Cemetery (the “Cemetery”) to fulfill its mission and be in the best interest of the Cemetery’s beneficiaries;

NOW, THEREFORE, it is agreed by and among the Parties, in consideration of the mutual covenants contained in this Stipulation, the adequacy of which are hereby acknowledged, that all claims of the Plaintiff against the Defendant be settled, compromised, and dismissed on the merits and with prejudice, and without costs as to Plaintiff or Defendant, on the following terms and conditions, which the Parties respectfully request be so-ordered by the Court:

Stipulated Relief

Defendant agrees to the following relief without admitting or denying Plaintiff's claims against him and without admitting liability in this Action:

1. Pursuant to EPTL § 8-1.4(m) and N-PCL § 714, Defendant hereby agrees not to serve and to be barred permanently from service as an officer, director or trustee or in any position where he has any fiduciary responsibilities for any not-for-profit or charitable organization incorporated, registered, operating or soliciting contributions in New York, or for any other individual or entity that holds charitable assets or solicit charitable contributions in the State of New York, including, but not limited to, responsibility for financial and/or management oversight of any New York charitable entity. This provision shall not preclude Defendant from practicing as an estate lawyer on behalf of private clients dealing with such matters as drafting wills, trusts, inter vivos gifts and the administration of private clients' trusts and estates, which may involve gifts or bequests to charitable organizations. That legal representation, however, may not entail serving as the trustee or other fiduciary of a charitable trust.

2. Defendant hereby agrees to pay to the Cemetery in the amount of \$585,000 (the "Settlement Amount") to resolve all the claims alleged against the Defendant in this Action by payment of the Settlement Amount to Plaintiff who shall hold the funds in escrow for the benefit of the Cemetery's charitable beneficiaries. Defendant further agrees that full payment of the Settlement Amount shall be made on the date that this Stipulation is fully executed by the Parties (the "Stipulation Date"), or not later than on or before October 31, 2024, provided, however, that Plaintiff shall return the Settlement Amount to the Defendant in the event that this Stipulation is not so ordered by the Court, Plaintiff shall release the full amount the Settlement and transfer the

funds Page 3 of 7

to the Cemetery within 30 days of the Court's entry of this so-ordered Stipulation.

3. Dismissal of lawsuit with prejudice. In consideration of the covenants undertaken herein, Plaintiff will discontinue with prejudice its claims in the Action against Defendant.

4. Resolution of all claims. This Stipulation, upon being so-ordered by the Court, will resolve all outstanding claims by Plaintiff against Defendant relating to the subject matter of the Action. Plaintiff hereby agrees that if this Stipulation is so ordered by the Court, and if the Defendant performs his obligations under the Stipulation, it will seek no additional recovery of any kind from Defendant in connection with the Action and the claims raised therein.

Additional Terms and Conditions

5. Defendant shall not take any action or make any statement denying, directly or indirectly, the propriety of this Stipulation or expressing any view that the Action is without a factual basis.

6. Plaintiff has agreed to the terms of this Stipulation based on, among other things, statements made by the Defendant under oath in this Action and representations to Plaintiff. To the extent that any material representation made by the Defendant, directly or through his counsel, during the course of the Action, is later found and determined by a court of competent jurisdiction to be intentionally false and misleading, this Stipulation is voidable by Plaintiff in its sole discretion.

7. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Stipulation has been made to or relied upon by Defendant in agreeing to this Stipulation. The Parties hereby acknowledge that each of them has been duly represented by counsel in agreeing to this Stipulation.

8. In the event that one or more provisions contained in this Stipulation shall for any reason be held invalid, illegal, or unenforceable in any respect, in the sole discretion of Plaintiff, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Stipulation.

9. If, for any reason, this Stipulation is voided or breached, Defendant agrees that: any

statute of limitations or other time-related defenses applicable to the subject of this Stipulation and any claims arising from or related thereto are tolled from and after the date of this Stipulation. In the event this Stipulation is voided or breached, Defendant expressly agrees and acknowledges that this Stipulation shall in no way bar or otherwise preclude Plaintiff from commencing, conducting, or prosecuting any investigation, action or proceeding, however denominated, related to this Stipulation, against Defendant, or from using in any way statements, documents, or other materials produced or provided by Defendant prior to or after the date of this Stipulation.

10. If a court of competent jurisdiction determines that Defendant has breached this Stipulation, Defendant shall pay to Plaintiff the cost, if any, of such determination and of enforcing this Stipulation including, without limitation, reasonable legal fees, expenses, and court costs.

11. Plaintiff finds this relief and the agreements contained in this Stipulation appropriate and in the public interest. Accordingly, Plaintiff accepts this Stipulation in settlement of the claims asserted against Defendant in its Verified Complaint. This Stipulation shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

12. Except as set forth above, the Parties hereto agree to bear their own fees, costs, and expenses of this matter.

13. Nothing contained herein shall be construed to deprive any person of any private right under the law or to grant any rights to third-parties hereunder.

14. This Stipulation may be executed in counterparts, each of which shall be deemed original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or electronic transmission in portable document format (PDF) of an executed counterpart of this agreement is as effective as delivery of an originally executed counterpart of this Stipulation.

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

To the Attorney General:

Sandra Pullman
Senior Counsel
Civil Rights Bureau
New York Office of the Attorney General
28 Liberty St., 20th Floor
New York, NY 10005
E-mail: Sandra.Pullman@ag.ny.gov
Cc: Emily.Stern@ag.ny.gov

Mihea Kim
Assistant Attorney General
Office of the Attorney General
28 Liberty Street, 20th floor
New York, New York 10005
E-mail: Mihea.Kim@ag.ny.gov
Cc: Emily.Stern@ag.ny.gov

To Defendant Anthony R. Mordente:

Noah Nunberg, Attorney for Anthony Mordente
L'Abbate, Balkan, Colavita & Contini, LLP
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
E-mail: nnunberg@lbccclaw.com

-and-

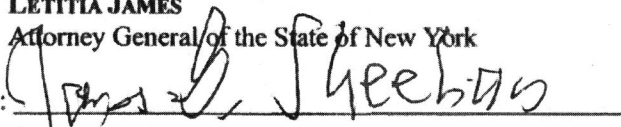
Anthony R. Mordente
Mordente Law Firm LLC
160-29 Union Turnpike
Fresh Meadows, NY 1136-1937
Email: amordente@mordentelaw.com

16. This Stipulation may not be amended except by an instrument in writing signed on behalf of all the Parties to this Stipulation.

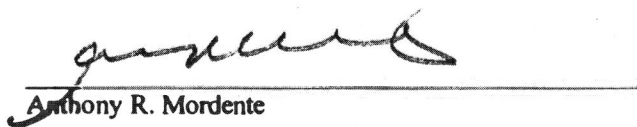
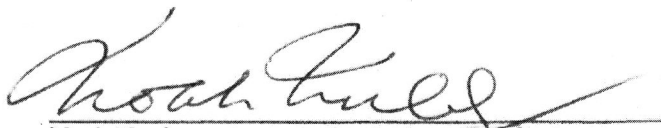
IN WITNESS WHEREOF, this Stipulation is executed by the parties hereto on October 22, 2024 (the "Effective Date").

LETITIA JAMES
Attorney General of the State of New York

By:

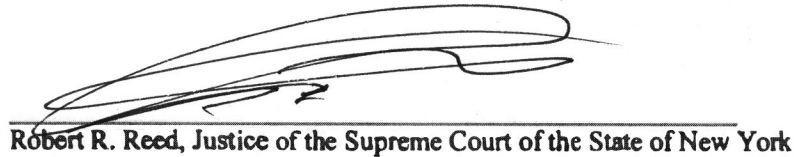


James Sheehan
Chief, Charities Bureau
28 Liberty Street
New York, New York 10005
Attorneys for Plaintiff


Anthony R. Mordente

Noah Nunberg, Attorney for Anthony R. Mordente
L'Abbate, Balkan, Colavita & Contini, LLP
3 Huntington Quadrangle, Suite 102S
Melville, NY 11747
E-mail: nnunberg@lbcclaw.com
Attorneys for Anthony Mordente

SO ORDERED:


Robert R. Reed, Justice of the Supreme Court of the State of New York

11/20/24