

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

1060 BEDFORD RETAIL LLC,

*Plaintiff,*

*-against-*

MI CASITA INC. and,  
EVA RUIZ,

*Defendants.*

Index No.: 503934/2021

**STIPULATION OF SETTLEMENT**

**WHEREAS**, Plaintiff 1060 BEDFORD RETAIL LLC (“Plaintiff”) is the owner of the premises located at 226 Clifton Place at 1060 Bedford Avenue UNIT C (the “Premises”).

**WHEREAS**, MI CASITA INC., (“Tenant”, and with Plaintiff, each a “Party”, and together with defendant Eva Ruiz, “Parties”) is a Tenant of the Premises.

**WHEREAS**, Plaintiff’s predecessor in interest, MERAL BEDFORD LLC, entered into a commercial lease and accompanying rider agreement dated October 23, 2017 (collectively the “Lease”), with Tenant MI CASITA INC., for a term of ten (10) years.

**WHEREAS**, EVA RUIZ, owner of MI CASITA INC., acted as guarantor of the Lease, and executed exhibit B to the Lease on October 23, 2017.

**WHEREAS**, The First Lease Amendment dated August 1, 2018 (“First Amendment”), *inter alia*, set the commencement date under the Lease as August 1, 2018. It

also modified the portion of the cellar used by Tenant for storage pursuant to a certain Exhibit A-1 that was attached to the First Amendment.

**WHEREAS**, The Second Lease Amendment dated January 15, 2019 (“Second Amendment”) revised the commencement date set by the First Amendment to February 1, 2019 and set the expiration date of the lease term as January 31, 2029.

**WHEREAS**, The Third Lease Amendment dated July 20, 2020 (“Third Amendment”) was entered into by all Parties due to the COVID-19 pandemic, temporarily modifying the rent as follows: for the months of May 2020, June 2020, July 2020, and August 2020, Tenant was to pay as base rent the amount of \$5,562.00 representing half of the monthly base rent; the other half of the base rent was to be drawn from Tenant’s security deposit. In addition, Plaintiff granted Tenant a \$1,284.66 rent abatement for the month of May 2020. The Third Amendment also set up a payment plan for the replenishment of the security deposit as follows: Starting September 1, 2020, and for the period of the ensuing twelve (12) months, Tenant was to pay an additional \$987.33 per month in addition to the base rent and additional rent due under the Lease.

**WHEREAS**, On or about October 12, 2020, after Tenant failed to meet their monthly rental obligation, Tenant was sent via Federal Express and Electronic Mail a Notice of Default for Nonpayment of Rent for rent in the amount of \$25,277.60.

**WHEREAS**, on or about December 10, 2020, after not receiving any monies from Tenant, Plaintiff sent Tenant via Federal Express and Electronic Mail a Notice of Termination stating that it was terminating the Lease based on the Default Notice and Tenant’s failure to tender the monies owed.

**WHEREAS**, Tenant has accrued Monthly Rent Charges in the amount of **\$70,242.54** (the “Arrears”), which represents the: monthly base rent; payment plan pursuant to the Third Amendment; and additional common charges and taxes pursuant to the Lease through February 28, 2021.

**WHEREAS**, pursuant to the Third Amendment, the amount of the New Security Deposit is \$22,000.00. Tenant currently has \$10,152.00 on account for the New Security Deposit.

**NOW, THEREFORE IN CONSIDERATION** for the mutual covenants and agreements hereinafter set forth and other good and valuable consideration the receipt of which is hereby acknowledged, Plaintiff and Tenant hereby enter into this Stipulation of Settlement (“Stipulation”), and covenant and agree as follows:

1) All the recital clauses hereinabove set forth are hereby incorporated by reference as though set forth verbatim and at length herein.

2) Capitalized terms used in this Stipulation, which are not otherwise defined herein, shall have the same definitions as in the Lease and subsequent amendments.

3) Simultaneously upon execution of this Stipulation, Tenant shall remit \$50,000.00 to Plaintiff. In exchange for the payment of the \$50,000.00, Plaintiff waives the balance of the Arrears. The entire amount of the waiver is \$20,242.54.

4) Tenant agrees to replenish the Security Deposit to the amount of \$11,848.00 by June 30, 2025 as follows, bringing the total amount of Security Deposit on account to \$22,000.00:

a) Commencing on June 1, 2021 and terminating on June 30, 2025, the Tenant shall make 48 monthly installments in the amount \$246.83 in addition to the required

monthly base rent and additional rent that comes due as per the Lease; and

b) Any escalations of the Security Deposit that are required by the Lease, must be made in accordance with the Lease and shall be made in addition to the payments required in Paragraph 4(a) herein.

5) If the Tenant does not comply with any subparagraph of paragraph 4, paragraph 4(a) is immediately rescinded upon default and all sums accelerate and come due on default.

6) Commencing March 1, 2021 ongoing base rent and additional rent (inclusive of CAM and tax reimbursements) is required and payable from Tenant to Landlord as per the Lease, as it comes due.

7) Tenant currently owes a balance of \$1,915.41 in addition to the Arrears, representing underpayment of rent for March, April, and May of 2021. Tenant agrees to pay the amount of \$1,915.41 to Landlord by May 31, 2021.

8) Each Party shall bear its own costs, including lawyers' fees, in relation to the negotiation and execution of this Stipulation and this action.

9) The Lease term Expiration Date remains January 31, 2029.

10) Upon execution of this Stipulation and clearance of the payment of the Arrears as delineated in Paragraph 3 herein, this proceeding is hereby discontinued against all Defendants. Promptly following execution of this Stipulation and receipt of all sums due hereunder, Plaintiff shall file a notice of dismissal and discontinuance of this action with the Court.

11) Tenant and Plaintiff shall keep the terms and provisions of this Stipulation and of any negotiations relating hereto, whether oral or written, strictly confidential. Tenant

and Plaintiff shall not disclose, and warrant that their representatives, members, partners officers, directors, shareholders, agents, attorneys, affiliates, and employees shall not disclose, such terms and provisions, except to the extent necessary: (i) to carry out the purpose of the Stipulation; (ii) in connection with any governmental or judicial proceeding in which the Tenant and Plaintiff are involved and required by law to disclose such information; and/or (iii) to obtain services from Tenant and/or Plaintiff attorneys, accountants, and professional advisors (provided such Parties agree to keep such information confidential and not to disclose it).

12) Plaintiff has entered into this Stipulation based upon Tenant's representations that the Tenant will comply with all of the terms and conditions hereunder. Tenant acknowledges and recognizes that "TIME IS OF THE ESSENCE" in complying with all of the terms and conditions of this Stipulation and that no delay with respect to Tenant's obligations hereunder shall be considered de minimis.

13) The Parties represent that they have read and reviewed this Stipulation, that they understand the terms hereof, as well as the obligations imposed upon them by this Stipulation. The Parties have entered into this Stipulation voluntarily.

14) This Stipulation supersedes and revokes all previous negotiations, arrangements, letters of intent, representations, and information conveyed, whether oral or in writing, between Plaintiff and Tenant, Plaintiff's representatives and/or any other person purporting to represent Plaintiff and/or Tenant solely with regard to the allegations, claims and defenses set forth in this action only. The Parties hereto acknowledge that any previous representation, information, arrangements or negotiations with regard to the allegations, claims and defenses set forth in this action only are merged into this Stipulation, which fully and

completely expresses the intent and Stipulation of the Parties herein. This Stipulation is entered into after full investigation. No Party hereto has relied upon any statement or representation not specifically embodied in this Stipulation. Nothing in this paragraph shall be construed to supersede and/or revoke any previous negotiations, arrangements, letters of intent, representations, and information conveyed, whether oral or in writing, between Plaintiff and Tenant and/or Plaintiff's representatives.

15) Except as otherwise provided in this Stipulation, no subsequent alteration, amendment, change or addition hereto shall be binding upon the Parties herein unless in writing and signed by all Parties. Except as otherwise provided in this Stipulation, the terms of the Lease, as amended, remain in full force and effect.

16) This Stipulation shall be binding upon the respective Parties, their heirs, assigns, executors, administrators and successors-in-interest to their property.

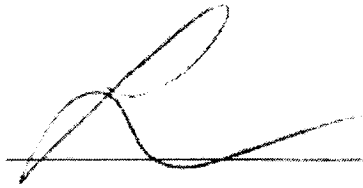
17) This Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18) Facsimile and/or PDF signatures shall be deemed originals herein.

Dated: New York, New York  
May \_\_\_\_, 2021

**KUCKER MARINO WINIARSKY  
& BITTENS, LLP**  
*Attorneys for Plaintiff*  
747 Third Avenue, 12<sup>th</sup> Floor  
New York, New York 10017  
Tel: (212) 869-5030

By:



Lisa Faham-Selzer, Esq.

Morgan, Lewis & Bockius LLP  
*Attorneys for Defendant*  
101 Park Avenue |  
New York, NY 10178-0060  
Tel: (212) 309-6000

By:  /s/ Matthew Cooper

Matthew Cooper, Esq.