



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LABOR BUREAU

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL

PLEA AGREEMENT

1. This is the plea agreement ("Agreement") between the State of New York Office of the Attorney General ("OAG") and defendant Johnco Contracting, Inc. ("Defendant").

2. This memorandum constitutes the entire Agreement between the Defendant and OAG. This Agreement supersedes any prior promises, agreements or conditions between the parties. No promises, agreements or conditions have been entered into other than those set forth in this Agreement. No modification, deletion or addition to this Agreement will be valid or binding on a party unless put into writing and signed by the parties. This Agreement includes a Corporate Resolution signed by the principal owner of Defendant, John A. Massino, authorizing Defendant's attorney, Eric Franz, Esq., to act on Defendant's behalf, attached as Attachment A. This Agreement will become effective immediately when signed by all the signatories listed below and approved by the Court.

3. Defendant will be charged in the Criminal Court of the State of New York, Queens County, State of New York, by way of a Felony Complaint with:

Grand Larceny in the Fourth Degree
Penal Law §155.30(1) ("E" felony) (1 count)

Falsifying Business Records in the First Degree
Penal Law §175.10 ("E" felony) (1 count)

4. **The Plea and Related Terms:**

a. In the Supreme Court, Queens County, Criminal Term, Defendant agrees to plead guilty to one count of Grand Larceny in the Fourth Degree under Penal Law §155.30(1) and one count of Falsifying Business Records in the First Degree under Penal Law §175.10, under a Superior Court Information. The Defendant agrees to waive prosecution by Indictment and agrees to be prosecuted by a Superior Court Information. This plea shall be in full satisfaction of the Felony Complaint against the Defendant and any crimes that could be charged in connection with the operation of Johnco Contracting, Inc., with its corporate headquarters located at 36-49 204th Street, Bayside, 11361, the County of Queens, State of New York for any violations of the Labor Law or Penal Law between January 1, 2013 through December 31, 2017.

b. This Agreement, which the parties shall request the Supreme Court, Queens County, Criminal Term approve, will become effective only upon the Court's approval. Upon the Court's approval, Defendant will plead guilty as set forth above in paragraph 4(a). At the time of its plea, Defendant will waive all defenses and all rights of appeal.

c. Defendant is represented by its attorney, Eric Franz, Esq. Defendant agrees that it has been advised of, and understands, the nature of the charges against it, the elements of the offenses with which it is charged, and the range of permissible sentences, including a three (3) year conditional discharge, a fine not exceeding the higher of \$10,000.00 or double the amount of the Defendant's gain from the commission of the crime, pursuant to Penal Law §80.10, restitution, a surcharge payable to the Court, and a crime victim's assistance fee.

d. Defendant's attorney is Eric Franz, Esq., and the Defendant is fully satisfied with the representation provided by its attorney. Defendant, by its President and owner John A. Massino, as authorized in Attachment A, has freely, knowingly and intelligently decided to be represented by Eric Franz, Esq.

e. By pleading guilty, Defendant is giving up the following rights, which it has discussed with its attorneys:

- 1) Defendant understands that by pleading guilty it is giving up its right to a trial.
- 2) Defendant understands that by pleading guilty it is giving up its right to have the People produce witnesses to testify against it.
- 3) Defendant understands that by pleading guilty it is giving up its right to have its attorneys cross-examine any witnesses who may testify against it.
- 4) Defendant understands that by pleading guilty it is giving up its right to have its attorneys produce witnesses to testify for it.
- 5) Defendant understands that by pleading guilty it is giving up its right to remain silent and the right to either have representative(s) for the Defendant testify or not testify at trial.
- 6) Defendant understands that by pleading guilty it is giving up its right to have the People prove its guilt beyond a reasonable doubt at trial.
- 7) Defendant understands that by pleading guilty its plea will operate just like a conviction of guilty after a jury trial.
- 8) Defendant understands that by pleading guilty, if it has a defense to the charges, it is giving up the right to present that defense at trial.
- 9) Defendant understands that by pleading guilty it is giving up its right to claim that the police or representatives of the New York State Department of Labor did anything illegal in regard to the charges, and the right to a hearing to determine if the police or representatives of the New York State Department of Labor's conduct was, in fact, illegal.

10) Defendant understands that it has a right to have a restitution hearing and that it is giving up that right to have such a hearing. Defendant acknowledges and agrees that the correct restitution amount is \$21,272.00 in unpaid wages and \$210,857.74 in unpaid unemployment insurance contributions, including interest. After January 29, 2018, interest will accrue at the rate of \$47.61 per day.

11) Further, in consideration for and as part of the plea agreement in this matter, Defendant hereby waives and relinquishes its right to appeal from any judgment of conviction, and from any proceedings herein that may result from this prosecution. Defendant has been advised of the right to appeal, the right to be represented by an attorney on appeal. It is Defendant's understanding and intention that this Agreement will be a complete and final disposition of the matter. Defendant makes this waiver knowingly and voluntarily after having been fully advised of its rights by the Court and having had a full and fair opportunity to discuss these matters with its attorney. At the time of the plea, Defendant shall execute a written waiver of appeal and relinquish these rights.

12) Defendant waives any and all rights to any claim of defective jurisdiction under Article 20 of the Criminal Procedure Law, any claim of speedy trial under Criminal Procedure Law §§30.20 and 30.30, as well as any claim under the period of limitations pursuant to Criminal Procedure Law §30.10 that are applicable to the felony and misdemeanor charges in the charging instrument.

13) Defendant understands and has discussed with its attorney the potential disciplinary consequences of its guilty plea pertaining to any licenses it may have with the New York State, and any other license, permit and professional permission it holds. Defendant has been advised that its guilty plea may subject it to revocation or suspension of its licenses, among other possible collateral consequences. Defendant understands that the disciplinary consequences of its plea will be imposed in a separate proceeding. Defendant wishes to plead guilty regardless of any disciplinary consequences of its guilty plea, even if its guilty plea will cause any consequences to its licenses to operate Johnco Contracting, Inc., in New York State or elsewhere. Defendant understands that it is bound by its guilty plea regardless of any disciplinary consequences of the plea. Accordingly, Defendant waives any and all challenges to its guilty plea and sentence based on any disciplinary consequences, and agrees not to seek to withdraw its guilty plea, or to file a direct appeal or any kind of collateral attack challenging its guilty plea, conviction, or sentence, based on any licensure or other professional consequences of its guilty plea.

14) Defendant has been advised and acknowledges that its failure to appear at any required court appearance is a violation of this Agreement, and the case will move forward in its absence and it may be sentenced up to the maximum amount of restitution, and/or fine authorized by law.

15) Defendant hereby agrees to enter a plea of guilty in accordance with the terms of the plea offer that has been made, having consulted with its attorneys and having been advised of all of the rights listed above.

f. Upon entering its guilty plea Defendant will allocute under oath concerning the following facts:

Between January 1, 2013 and December 31, 2017, Defendant Johnco Contracting, Inc., was owned by John A. Massino, and had its corporate headquarters at 36-49 204th Street, Bayside, 11361, Queens County, State of New York. On or about and between January 1, 2013 and December 31, 2017, Defendant employed over one hundred (100+) workers as laborers (“the Employees”). During this time, Defendant failed to pay the Employees all wages lawfully earned, including proper overtime rate of time and one half, and for several of the Employees, Defendant’s non-payment of overtime rate amounted to an unlawful withholding of property, namely: wages in the form of money in excess of \$3,000, totaling \$21,272.00. Additionally, for the third and fourth quarters of 2013, and for the first, second and third quarters of 2014, Defendant falsified business records of Johnco Contracting, Inc., namely: NYS Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns (“NYS-45s”), by failing to properly list all of the Employees employed by Defendant and in so doing, Defendant willfully failed to make contributions to the New York State Unemployment Insurance Fund in the amount of \$210,857.74, including interest through January 29, 2018.

5. **Restitution and Contributions:** Defendant shall pay: \$21,272.00 in restitution and reparations pursuant to Penal Law §60.27 to the OAG on behalf of the Employees; and \$210,857.74 in unpaid unemployment insurance contributions, including interest, pursuant to Labor Law §570, to the OAG on behalf of the New York State Department of Labor, Unemployment Insurance Division. Defendant shall be liable to pay the restitution, unemployment insurance contributions, and any applicable fines as follows:

a. Prior to or on the date that Defendant is sentenced, which shall be on or before January 29, 2018, subject to the Court’s availability, Defendant must deliver a certified check, bank check, money order, cashier’s check, or attorney escrow check for \$21,272.00 payable to the “New York State Attorney General’s Office,” and a certified check, bank check, money order, cashier’s check, or attorney escrow check for \$210,857.74 payable to the “New York State Department of Labor,” by personal delivery to the Assistant Attorney General present at court or by mailing to Assistant Attorney General Jennifer Michael, at the Office of the Attorney General, 120 Broadway – 26th Floor/Labor Bureau, New York, New York 10271.

b. If the sentencing date is adjourned to a date after January 29, 2018, by either the Court or a mutually agreed upon date between OAG and Defendant, then a per diem rate of interest will be applied to the final amount owed for the Unemployment Insurance contributions, which is \$47.61 per day.

c. If Defendant does not pay the restitution and fines as described above in paragraphs 5(a)-(b), then Defendant will be deemed not in compliance with this Agreement and will be sentenced in accordance with paragraph 7 of this Agreement.

6. **Debarment List:** Defendant Johnco Contracting, Inc. (FEIN XX-XXX0600), and its president and owner John A. Massino (last four Social Security digits - 1541) agree to be placed on the New York State debarment list, which is kept by the New York State Department of Labor, prohibiting Defendant and its president and owner John A. Massino from bidding on, securing, or being awarded any public works contract in the state of New York for a period of five (5) years from the date of sentencing/conviction.

7. It is a violation of this Agreement if:

a. Defendant fails to deliver the restitution and fine payments as set forth in paragraph 5 to the OAG and/or Court; or

b. Defendant and/or John A. Massino fail to abide by the terms set forth in paragraph 6; or

c. Defendant violates the Labor Law or any term of this Agreement or commits any other crime contained in either the Labor or Penal Laws of the State of New York before sentencing.

8. If the OAG, in its sole discretion, determines that the Defendant has fully complied with this Agreement:

a. The OAG will recommend that the Court sentence Defendant to a three-year conditional discharge, during which time Defendant must abide by the conditions listed in paragraphs 5 and 6. Additionally, the Court may impose mandatory surcharges and the crime victims' assistance fee.

b. The OAG agrees not to prosecute John A. Massino in connection with the operation of Johnco Contracting, Inc., located at 36-49 204th Street, Bayside, 11361, in the County of Queens, State of New York, for any violations of the Labor Law or Penal Law between January 1, 2013 and December 31, 2017, and at the time of sentencing of Defendant, the OAG will execute a non-prosecution agreement with John A. Massino.

c. Defendant understands that the Court has the authority to impose any lawful sentence pursuant to the pleas of guilty. The maximum permissible sentence for the violation of Grand Larceny in the Fourth Degree under Penal Law §155.30(1) and Falsifying Business Records in the First Degree under Penal Law §175.10 for a corporation is a three (3) year conditional discharge, pursuant to Penal Law §65.05, a fine of no more than the higher of \$10,000.00 or double the amount of the Defendant's gain from the commission of the crime, pursuant to Penal Law §80.10, and restitution.

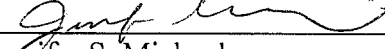
9. If Defendant does not comply with this Agreement in any respect, including:
 - a. Failing to pay the restitution and/or unemployment insurance contributions prior to or on the date of plea as described above in paragraph 5(a), then the OAG reserves the right to withdraw the plea agreement and/or recommend that the Court sentence Defendant to a fine of \$464,259.48, representing double the amount of Defendant's gain from the commission of the crime, pursuant to Penal Law §80.10.
 - b. Failing to pay the restitution and/or unemployment insurance contributions prior to or on the date of sentencing as described above in paragraphs 5(b), the OAG reserves the right to recommend that the Court sentence Defendant to a fine of \$464,259.48, representing double the amount of Defendant's gain from the commission of the crime, pursuant to Penal Law §80.10.
 - c. Defendant Johnco Contracting, Inc., and/or John A. Massino failing to abide by the New York State public works debarment list for five (5) years as described above in paragraph 6(b), the OAG reserves the right to file a motion for a Violation of Conditional Discharge pursuant to New York Criminal Procedure Law §410.30.
10. Additionally, if Defendant fails to comply with the conditions set forth in paragraphs 5(a)-(b), the OAG may prosecute Johnco Contracting, Inc. owner/president John A. Massino, individually in connection with the operation of Johnco Contracting, Inc., located at located at 36-49 204th Street, Bayside, 11361, in the County of Queens, State of New York, for any violations of the Labor Law or Penal Law between January 1, 2013 and December 31, 2017. As to any prosecution brought by the OAG pursuant to this paragraph for any offense committed within five years (5) of the date of this Agreement or for any offense committed on or after the date of this Agreement, John A. Massino waives any claim that such prosecution is time barred on grounds of speedy trial, speedy arraignment, the statute of limitations, or delayed prosecution.
11. It is further understood that acceptance of the plea and sentence specified in this Agreement is subject to approval of the Court. In the event the Court does not approve the plea or sentence, the parties may agree to revise the terms in writing, such that it is acceptable to the Court, or either party, in writing, may terminate this Agreement.
12. The OAG shall not refer any conduct referred to in paragraph (4)(f) to any other governmental agencies or other prosecuting offices. This Agreement is limited to the OAG and cannot bind other governmental agencies or other prosecuting offices.
13. The OAG and Defendant reserve all rights under the law to make statements or submissions to the Court in connection with sentencing, not inconsistent with the provisions of this Agreement.

14. This Agreement consists of seven (7) pages including the signatory pages.


Dated: New York, New York

Jan. 29, 2018

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
Jennifer S. Michael
Assistant Attorney General

Authorized by Corporate Resolution (See Attachment A):



Eric Franz, Esq.
Attorney for Johnco Contracting, Inc., and John A. Massino
Law Offices of Eric Franz P.L.L.C.
747 Third Ave., 20th FL
New York, New York 10017

Date: January 13, 2018