

ATTORNEY GENERAL OF THE STATE OF NEW YORK
LABOR & CIVIL RIGHTS BUREAU

IN THE MATTER OF THE INVESTIGATION OF LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, of

PASTA RESOURCES LLC d/b/a B&B HOSPITALITY GROUP, BABBO LLC d/b/a BABBO RISTORANTE ENOTECA, RED CLAM LLC d/b/a LUPA OSTERIA ROMANA, IL POSTO MANAGEMENT LLC d/b/a DEL POSTO, JOSEPH BASTIANICH, and MARIO BATALI.

ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)

AOD No. # 21-031

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to New York Executive Law § 63(12) to determine whether Pasta Resources LLC d/b/a B&B Hospitality Group (“B&B”), Babbo LLC d/b/a Babbo Ristorante Enoteca (“Babbo”), Red Clam LLC d/b/a Lupa Osteria Romana (“Lupa”), Il Posto Management LLC d/b/a Del Posto (“Del Posto”), Joseph Bastianich (“Bastianich”), and Mario Batali (“Batali”) (collectively referred to herein as the “Respondents”) have engaged in unlawful sex discrimination based on a hostile work environment and retaliation in violation of New York State Human Rights Law (“NYSHRL”), New York Executive Law § 296 et seq. and New York City Human Rights Law (“NYCHRL”), N.Y.C. Admin. Code § 8-107(1)(a), and to determine whether a proceeding or action should be instituted against the Respondents pursuant to New York Executive Law § 63(12) for violating these provisions of state and city human rights laws.

This Assurance of Discontinuance (“AOD”) contains the findings of OAG’s investigation and the relief agreed to by OAG and the Respondents. For purposes of resolving the OAG’s inquiry, the Respondents have agreed to enter into this Assurance to avoid the further expense of time and resources involved in this investigation and any future litigation.

FINDINGS

Introduction and Background

1. Prior to the COVID-19 pandemic, Babbo, Del Posto and Lupa were restaurants located in New York City. B&B is a management services company that provided back office and operational support to Babbo, Del Posto and Lupa. The back-office services include payroll, accounting, human resources, marketing and IT services (B&B, Babbo, Del Posto and Lupa collectively referred to as “B&B Respondents”). At present, only Babbo and Lupa remain in operation.

2. Prior to March 5, 2019, Babbo, Del Posto and Lupa were each owned, in large part, by Bastianich and Batali.

3. On or about March 5, 2019, Batali divested ownership interest in Babbo, Del Posto, and Lupa. After this date, ownership structures changed, with Bastianich still maintaining substantial ownership in each restaurant.

4. All three restaurants were closed due to the COVID-19 pandemic on or about March 16, 2020, and at that time all staff was laid off. In May 2020, Lupa began to bring back employees as pandemic restrictions eased, and in November 2020, Babbo did the same. In or around April 2021, Del Posto was acquired by new owners and it is no longer owned or operated by Bastianich.

5. In late 2017, multiple allegations of sexual harassment against Mario Batali were publicized during the height of the MeToo movement against sexual violence and assault. Current and former employees alleged that Respondents fostered a sexualized culture of misconduct and harassment at their restaurants in New York City including Babbo, Lupa and Del Posto. The OAG then commenced an investigation of the Respondents.

6. Over the course of the investigation, the OAG interviewed numerous former employees of the Respondents and issued a subpoena to the Respondents; reviewed documents provided by the Respondents; and identified more than two dozen potential claimants.

7. The findings herein do not constitute admissions, and this AOD is not to be used by any third parties against Respondents. This AOD also does not constitute admissible evidence in the litigation contemplated in Paragraph 26, below.

Hostile Work Environment & Retaliation

8. Based on its investigation, the OAG has concluded that since at least 2016 through 2019:

- a. On at least one occasion, Batali subjected a female former employee at Lupa to sexually explicit comments regarding her appearance, unwanted touching, and unwelcome sexual advances, and further subjected a male employee to an unwelcome and sexually explicit video;
- b. Multiple former employees witnessed and/or experienced inappropriate sexually harassing behaviors including unwanted sexual advances, unwanted touching, and sexually explicit comments;
- c. Multiple former employees experienced a hostile work environment where they were subject to comments made by their manager or supervisor regarding their physical appearance and gender;
- d. The Respondents failed to take appropriate action against such unlawful behaviors in response to complaints made to them, and on occasion in fact discouraged the reporting of such complaints.

Harassment by Batali

9. The OAG found that Batali sexually harassed a female server at Lupa where he made sexually explicit comments to her and forcibly grabbed her hand while she was serving him and pulled it toward his crotch.

10. The OAG found that Batali showed a male server at Lupa an unwelcome pornographic video.

Unwelcome touching, sexual comments and advances

11. Several female employees were forcibly groped, touched, hugged and/or kissed by male colleagues.

12. Multiple female employees were subject to unwanted touching and sexual advances by a manager.

13. Several female employees were subject to sexualized comments made toward them by male colleagues including but not limited to comments about “getting on her knees”, being told they had a “beautiful mouth”, asked if they were a “bad girl”.

14. A male employee was also subject to sexualized comments made toward him, including references to “getting frisky” and “golden showers”.

15. Several female employees were subject to repeat harassment by male colleagues where they received unwanted attention and were repeatedly asked out, stared at, and/or followed despite their rejection of these advances.

Hostile work environment

16. Several female employees experienced a gender-based discriminatory work environment in which chefs and managers favored male employees and made misogynistic comments.

17. Multiple women complained of a hostile work environment and harassment by a chef they worked for.

18. Several female employees were subject to gender-based comments by a manager about their image and appearance, including observations about their height and weight. The manager told them that they should wear makeup and insinuated that they should get breast implants, asking, “Did you know that you can get a boob job? That you can buy boobs now?”

19. Several female employees were subject to gender-based comments by their manager where they were referred to as a “little girl”, yelled at in front of dining guests, called “sensitive”, told “females should not work in the mezzanine”, and further told they could not be captain because they were a “girl”.

20. Several female employees were subject to gender-based comments made by male coworkers on a regular basis about their image and the outfits they chose to wear.

Lack of Recourse

21. The OAG investigation found that while several employees complained to B&B Respondents regarding harassing conduct made by colleagues and managers, insufficient action was taken to rectify some of the conduct or prevent it from happening again.

22. Multiple employees who reported complaints about a misogynistic or sexualized workplace, were dismissed by the chef or manager they complained to, and no action was taken in response.

23. The OAG investigation found that even when B&B Respondents investigated a complaint of harassment, many times the victim and harasser were interviewed and spoken to together, and the harasser received minimal discipline in the form of a verbal reminder of the sexual harassment policy. On some occasions, the harasser received a written warning, but no

action was taken to modify work schedules to protect the victim from further contact with the harasser. In many instances, harassment continued.

24. The OAG found that B&B Respondents did maintain a sexual harassment policy since at least 2012, but the harassment complaints that employees reported were not always investigated and were generally dismissed with minimal or no action taken against the harassers.

25. The OAG found that, on at least two occasions, when employees complained of sexual assault incidents outside of the workplace by male colleagues, B&B's Human Resources Department initially responded that the company could not take any action because the assault took place outside of the workplace and/or could not take action unless the complainant filed a police report. On one occasion, Human Resources at B&B ultimately assisted the employee in filing a police report and took action against the accused assailant.

26. Based on the foregoing, the OAG has concluded that Respondents engaged in persistent and repeated illegality in violation of NYSHRL, N.Y. Exec. Law § 296 et seq., and NYCHRL, N.Y.C. Admin. Code § 8-107(1).

27. For purposes of resolving the OAG's inquiry, Respondents have agreed to enter into this Assurance.

28. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties:

RELIEF

Entities Bound By Assurance

29. This Assurance binds Batali, individually, Bastianich, individually, and B&B Respondents, their principals, beneficial owners, officers, and shareholders, and any future companies in which Batali and/or Bastianich and the principals of B&B have a majority ownership stake in New York State.

30. . Mr. Batali does not currently have a majority ownership stake in any restaurant located in New York State and, to the extent no restaurants located in New York State are majority owned by Batali during the effective period of this Assurance as it applies to him, he is not subject to the ongoing Programmatic Relief obligations set forth in paragraphs 31 to 36 below, or the reporting obligations set forth on paragraphs 43 to 46 below. Should he obtain a majority ownership stake in any restaurant in New York State during the effective period of this Assurance, he will be subject to the ongoing Programmatic Relief obligations set forth below.

Compliance with New York State and City Human Rights Laws Governing Anti-Discrimination Employment Practices

31. Respondents hereby acknowledge that they understand and will comply with all applicable state and city laws pertaining to employment discrimination and harassment, including but not limited to the NYSHRL and the NYCHRL. Respondents acknowledge that any future violation of such laws pertaining to sex and/or gender discrimination and harassment in employment is a violation of this Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 26, in addition to any other appropriate investigation, action, or proceeding.

Programmatic Relief

32. The Respondents will begin to implement the relief described in paragraphs 33 to 36 below immediately upon the full execution of this Assurance (“the effective date”) and continue to implement the relief for three (3) years from the effective date (“the effective period”).

33. Any and all restaurants majority owned and/or operated by Respondents in New York State are subject to these provisions and shall implement the relief described in paragraphs 33 to 36 below during the effective period.

34. Respondents agree to revise their training of their employees and managers on NYSHRL and NYCHRL anti-discrimination workplace behaviors and compliance. Specifically, Respondents have submitted the following written materials to the OAG:

- a. Anti-sexual harassment and discrimination workplace training to be provided to all employees in accordance with state and city standards, which includes the following elements:
 - i. A prohibition on interviewing the complainant and accused together during an internal investigation;
 - ii. A requirement that a complaint of harassment or assault by one employee against another, whether the alleged misconduct occurred in or outside of the workplace, be investigated and addressed to the extent it creates a hostile or intimidating work environment for the victim;
 - iii. An explanation that an employee need not file a police report or pursue criminal charges against another employee in order for a complaint of harassment of assault that creates a hostile work environment to be investigated and addressed; and

- iv. Any other remedial measures as required by law.
- b. Anti-sexual harassment rights and responsibilities poster will continue to be displayed for employees in English and Spanish in an open and obvious place.
- c. Anti-sexual harassment rights and responsibilities notices or fact sheets will continue to be distributed to all current and future employees.
- d. Anti-sexual harassment in-person or web-based module to be provided to all current and future employees annually.
- e. A harassment and discrimination complaint process for employees, including designated individuals or management to receive complaints on behalf of Respondents, and instructions to be given to management on how to handle such complaints.
- f. A written policy confirming the Respondents' obligation not to retaliate against employees for protected activity, including raising complaints of discrimination or hostile work environment.

These proposed training materials have been approved by the OAG for implementation.

35. Respondents will conduct a training based on the materials set forth in paragraph 33. All existing employees will be trained on the materials within two (2) months of OAG approval of the materials set forth in paragraph 33. Thereafter, new employees will be trained within thirty days of commencing employment with Respondents. Training will continue on an annual basis and must be provided to all employees no less than one (1) time per year throughout the effective period. Trainings shall be in person or web-based and must cover each of the topics set forth in paragraph 33. For employees whose primary language is not English and who so request,

Respondents will provide translation services, or separate trainings, in the applicable language, as required by law.

36. Respondents shall create and maintain records regarding all training conducted pursuant to paragraph 33, including records of attendance.

Monetary Payment

Payments to OAG

37. Respondents agree to pay **\$600,000.00** in resolution of the OAG's investigation, which will be paid directly to the OAG and will be used for distribution as restitution to current or former employees for violations of laws specified in Paragraph 26 of this Assurance.

38. The Settlement Funds shall be paid within thirty (30) calendar days of the date of execution of this agreement.

39. Payments from Respondents to the OAG must be in the form of a wire transfer, certified check, bank check, money order, or attorney's check made payable to "The New York State Department of Law," and forwarded to the New York State Attorney General's Office to the attention of:

Sandra Pullman
Senior Counsel
Civil Rights Bureau
28 Liberty Street
New York, NY 10005.

The payment and all correspondence related to this Assurance must reference "Assurance # 21-031."

40. The OAG has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. Respondents agree to provide reasonable cooperation necessary to locate current and former

employees who may be eligible for restitution. In consideration for receiving any monetary award pursuant to this agreement, each employee shall execute a written release of claims to Respondents. The OAG will provide copies of all such releases to counsel for Respondents on a confidential basis, attorney's eyes only, so that the identity of such claimants will not be disclosed to the Respondents unless the claimant initiates any additional complaint against the Respondents.

41. The requirements of this Assurance will expire three (3) years after the effective date, except that the OAG may, in its sole discretion, extend the Assurance term upon a good faith determination that a Respondent has not complied with this Assurance. The OAG shall give such Respondent at least 30 days prior written notice of its intent to extend the Assurance (which notice shall contain the details of the basis therefor). Such Respondent shall have the right to cure any alleged default or violation that the OAG believes is sufficient to give rise to such extension.

Non-Dischargeable Judgment

42. In the event of bankruptcy, Respondents expressly agree not to seek to discharge or extinguish the amounts owed as part of this Settlement.

Monitoring and Oversight

43. Periodic Compliance Reports: Respondents subject to the Programmatic Relief set forth in paragraphs 31-36 above shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraphs 31 to 36 (Programmatic Relief), to be submitted to the OAG within forty-five (45) calendar days of the date of execution of this agreement. This report shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance. This report shall be signed by Respondents. Thereafter, a report of compliance shall be submitted to the OAG on an annual basis for the following three (3) years.

In any case where the circumstances warrant, the OAG may require the Respondents to file an interim report of compliance upon thirty (30) days' notice.

44. Periodic Certification of Compliance: Respondents with a majority ownership stake in any restaurant located in New York State shall provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs 31 to 36 (Programmatic Relief), to be submitted to the OAG by August 1, 2021. This certification shall be in writing and be signed by Respondents. Thereafter, a certification of compliance shall be submitted to the OAG on an annual basis for the following three (3) years. In any case where the circumstances warrant, the OAG may require Respondents to file an interim certification of compliance upon thirty (30) days' notice.

45. Bi-Annual Reports: Respondents will submit biannual reports to the OAG for the next three (3) years. These reports shall include records of training they provided to their employees, information regarding any changes to their policies described in paragraph 33, and a description of all discrimination or harassment complaints that were made (whether orally or in writing) and how they were handled by management.

46. Respondents expressly agree and acknowledge that a default in the performance of any obligation under this paragraph during the Effective is a violation of the Assurance against the defaulting Respondent,, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 26, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 26, pursuant to Executive Law § 63(15).

No Retaliation

47. Respondents agree that they shall comply with NYSHRL and NYCHRL and shall not in any manner discriminate or retaliate against any of their employees, including but not limited to employees or former employees who cooperated or are perceived to have cooperated with the OAG's investigation of this matter. Respondents agree not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the OAG's investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the NYSHRL and NYCHRL.

48. In an effort to facilitate this obligation, the OAG has not disclosed to Respondents at this time, and in the future will only disclose to Respondents' counsel pursuant to the terms of paragraph 40 above, the identity of any employee that has cooperated with the OAG's investigation.

Ongoing Cooperation

49. Respondents agree to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this Assurance. During the effective period, Respondents agree that the OAG shall have full access to the contact information of its employees that have worked in New York State upon fifteen (15) days written notice, in order to reach them through by mail, telephone, or electronic means.

Penalty for Non-Compliance

50. If an OAG inspection shows a material violation of paragraphs 31 to 36 of this Assurance, the Respondent responsible for the violation agrees to pay \$25,000.00 in liquidated damages for each violation, separate and apart from any other penalty or damages associated with the violation, provided that prior to any assessment of liquidated damages, Respondents shall be

notified of the violation in writing, effective two days after mailing via first class mail, after which Respondents shall have ten (10) days to cure the violation.

MISCELLANEOUS

Representations and Warranties

51. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by Respondents and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 28 above. Respondents represent and warrant that they have not made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents are later found to be inaccurate or misleading, this Assurance is voidable against that Respondent by the OAG in its sole discretion.

52. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

53. Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

54. Unless a term limit for compliance is otherwise specified within this Assurance, the Respondents' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve Respondents of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

55. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Respondents violate the Assurance after its effective date.

56. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

57. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

58. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

59. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

60. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

61. The effective date of this Assurance shall be July 22, 2021. The effective period shall be for three years after the effective date.

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

From Respondents to the OAG:

New York State Office of the Attorney General
Sandra Pullman, Senior Counsel, Civil Rights Bureau
28 Liberty Street, New York, NY 10005
or Sandra.pullman@ag.ny.gov

From the OAG to Bastianich and B&B:

Carolyn Richmond
Fox Rothschild
101 Park Avenue, 17th fl.
New York, NY 10178
or CRichmond@foxrothschild.com

From the OAG to Batali:

David Rabinowitz
Moses & Singer LLP
405 Lexington Avenue
New York, NY 10174
or drabinowitz@mosessinger.com

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

63. This Assurance may be electronically signed, and any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

64. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on this ___ day of July 2021.

LETITIA JAMES
Attorney General of the State of New York

By: _____
Sandra Pullman
Senior Counsel
Civil Rights Bureau
28 Liberty Street
New York, New York 10005

Dated: July __, 2021

By: _____
Mario Batali, Individually
c/o
David Rabinowitz
Moses & Singer LLP
405 Lexington Avenue
New York, NY 10174

Dated: July __, 2021

By: _____
Joseph Bastianich, Individually
and on behalf of:
Pasta Resources LLC,
Babbo LLC,
Red Clam LLC, and
Il Posto Management LLC

c/o
Carolyn Richmond

Fox Rothschild
101 Park Avenue, 17th fl.
New York, NY 10178
Dated: July __, 2021

From the OAG to Batali:

David Rabinowitz
Moses & Singer LLP
405 Lexington Avenue
New York, NY 10174
or drabinowitz@mosessinger.com

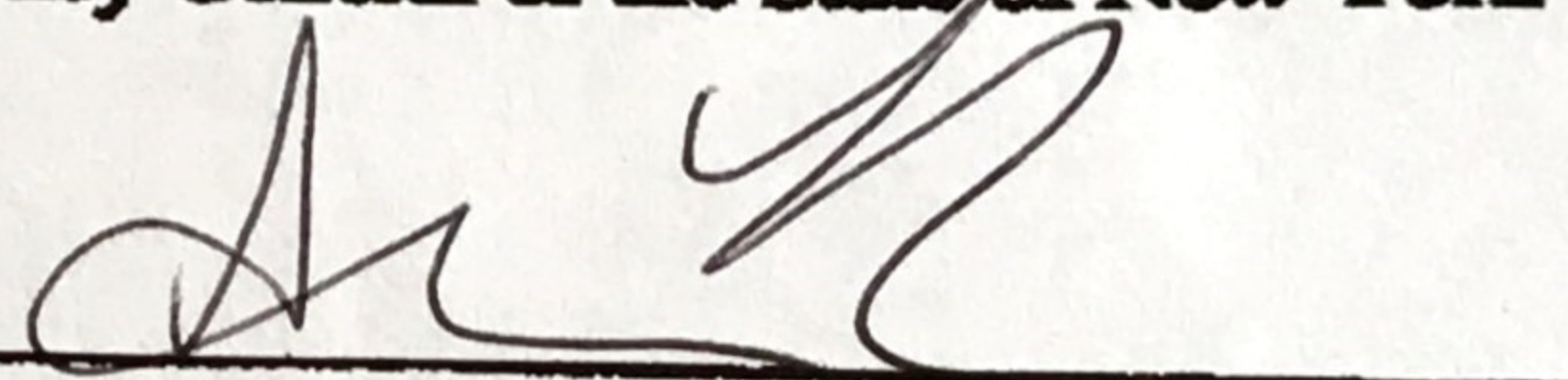
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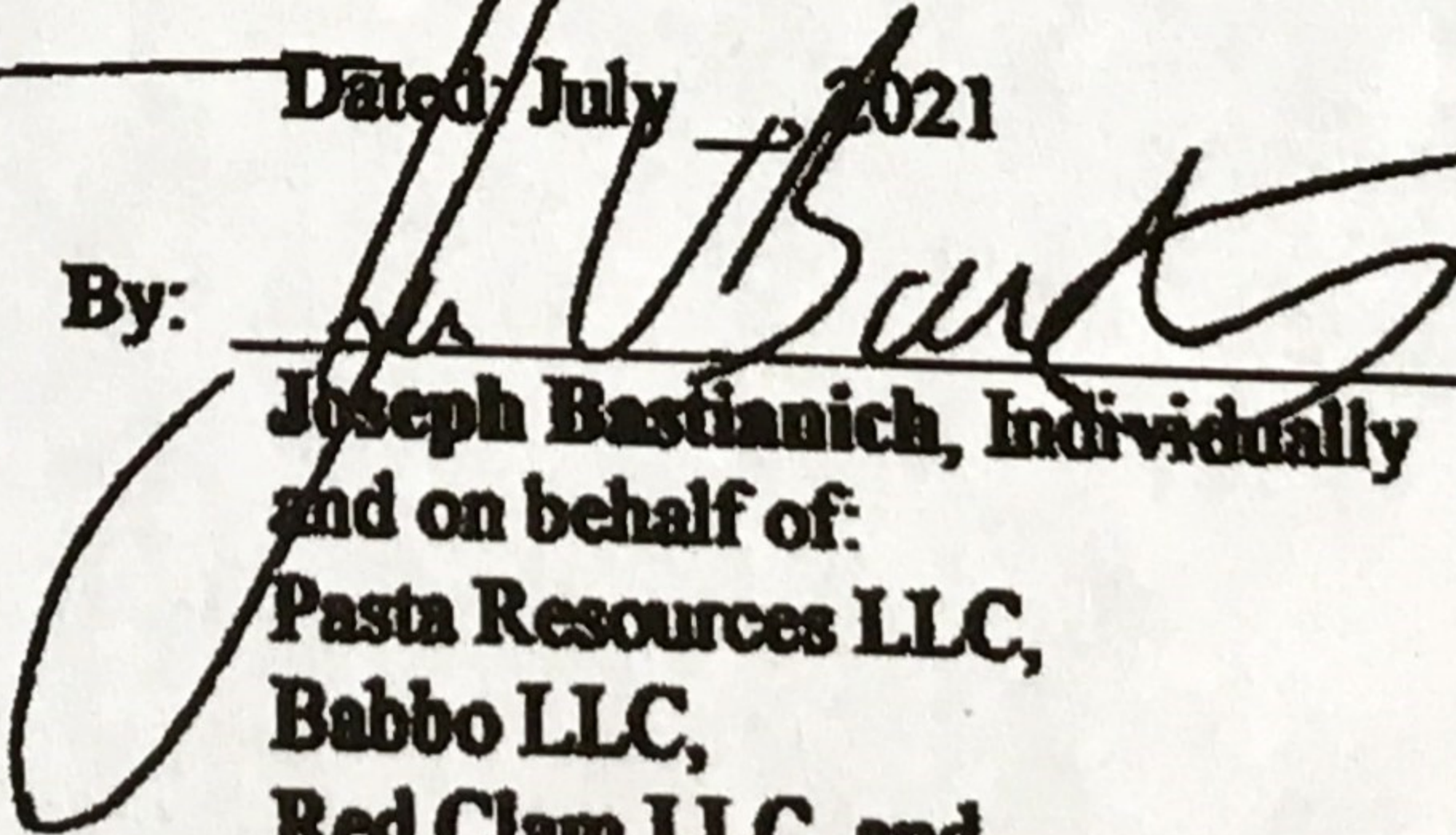
IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on this 22 day of July 2021.

LETTIA JAMES
Attorney General of the State of New York

By: 

Sandra Pullman
Senior Counsel
Civil Rights Bureau
28 Liberty Street
New York, New York 10005

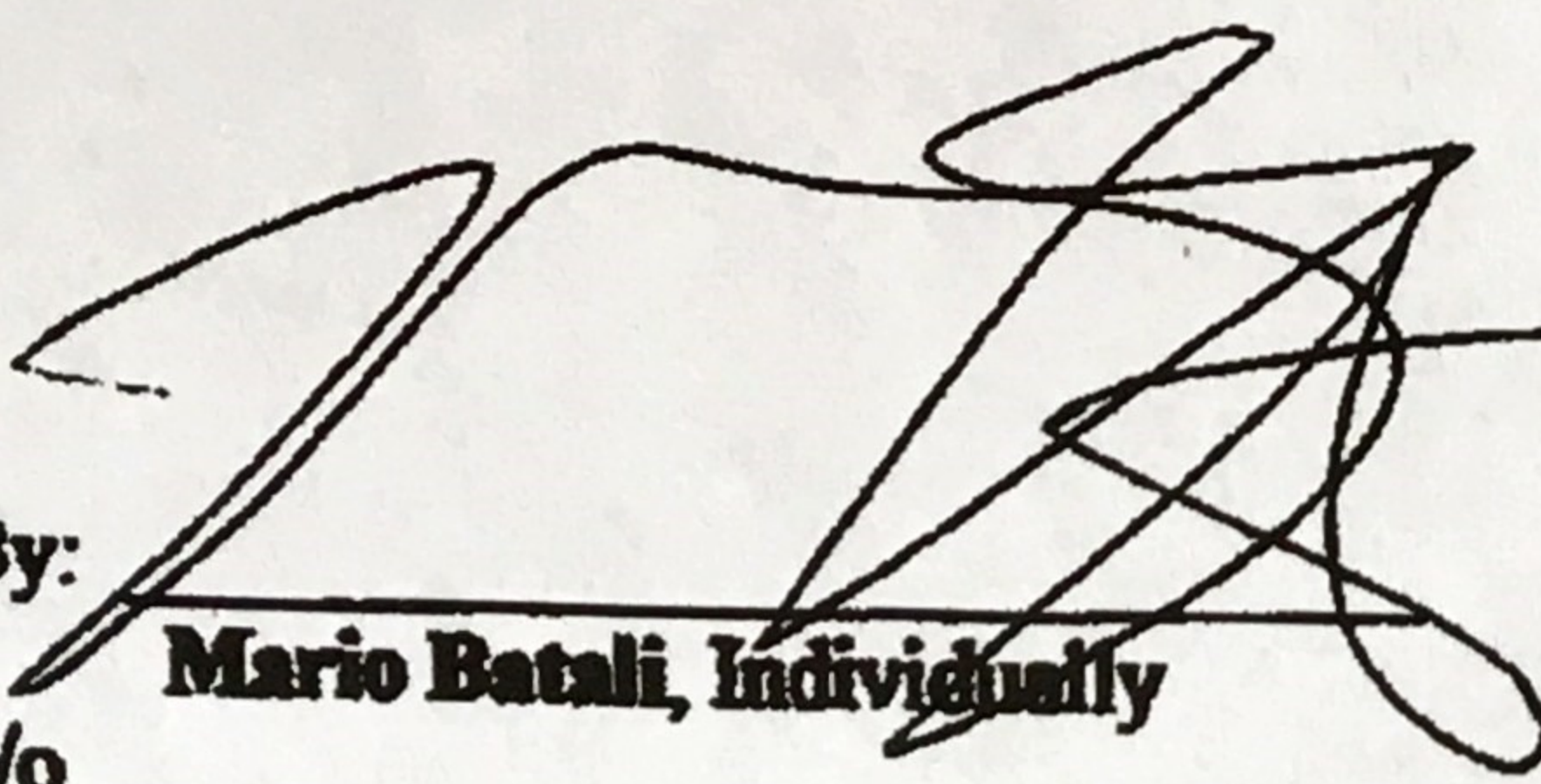
Dated: July 21, 2021

By: 

Joseph Bastianich, Individually
and on behalf of:
Pasta Resources LLC,
Babbo LLC,
Red Clam LLC, and
Il Posto Management LLC

c/o

Carolyn Richmond

By: 

c/o

Mario Batali, Individually

David Rabinowitz
Moses & Singer LLP
405 Lexington Avenue
New York, NY 10174

Dated: July 21, 2021