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August 26, 2025

**VIA NYSCEF**

Hon. James D'Auguste  
Supreme Court of the State of New York  
County of New York  
71 Thomas Street, Room 103  
New York, New York 10013

Re: *Ginarte Gallardo Gonzalez & Winograd, LLP v. William Schwitzer, et al.*  
Index No. 159991/2018 (Sup. Ct. N.Y. County)

Dear Justice D'Auguste:

As Your Honor is aware, this firm represented Ginarte Gonzalez & Winograd, LLP f/k/a Ginarte Gallardo Gonzalez & Winograd, LLP (the "Ginarte Firm") in the action captioned *Ginarte Gallardo Gonzalez & Winograd, LLP v. William Schwitzer, et al.*, Index No. 159991/2018 (Sup. Ct. N.Y. County) (the "Action"). That Action was resolved through a Settlement Agreement and General Release dated January 17, 2023 (the "Agreement"). In connection with that resolution, a stipulation of discontinuance without prejudice was filed with the Court, which the Court so ordered on January 26, 2023 ([NYSCEF No. 264](#)) (the "Stipulation of Discontinuance"), a copy of which is annexed hereto as **Exhibit 1**.

The Stipulation of Discontinuance provides that "[t]his Court shall retain jurisdiction over this matter for purposes of enforcement of the Settlement Agreement," and further provides that "[u]pon written notice by any party to the Court of the occurrence of certain events set forth in the Settlement Agreement, this matter shall be revived and reopened before this Court under the same caption and index number in the procedural posture as existed immediately prior to the entry of this stipulation and order but with all statute of limitations and laches defenses expressly waived by defendants" William Schwitzer & Associates, P.C., William Schwitzer ("Mr. Schwitzer"), Giovanni Merlino, Barry Semel-Weinstein, Beth Diamond, Rene G. Garcia ("Mr. Garcia"), and The Garcia Law Firm, P.C. and (collectively, "Defendants").

Regrettably, we write to advise the Court that the Defendants have defaulted under the Settlement Agreement, and to request that the Court revive this action and schedule a conference to establish a discovery schedule.

On August 1, 2025 this firm sent written notice to Messrs. Schwitzer and Garcia pursuant to Section 4 of the Agreement, titled "Default," regarding their failure to remit the full payment

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owed to the Ginarte Firm in connection with the action captioned *Santos S. Sanchez Fuentes v. YJL Broadway Hotel, LLC, et al.*, Index No. 160915/2017 (Sup. Ct. N.Y. County) (the “*Sanchez Fuentes Case*”) (the “Demand Letter”), a copy of which is annexed hereto as **Exhibit 2**. The Demand Letter advised Messrs. Schwitzer and Garcia that under Section 2(d) of the Settlement Agreement the Ginarte Firm is entitled to 50% of the “Legal Fee” (defined as one-third of total recovery) derived from the \$3,750,000 resolution of the *Sanchez Fuentes Case* – i.e., \$625,000<sup>1</sup> – but had only received \$475,000, a \$150,000 shortfall. The Demand Letter further noted that the Closing Statement filed with Office of Court Administration on July 8, 2025 reported only \$950,000 in attorney’s fees (rather than the full \$1,250,000),<sup>2</sup> with legal funder Case Cash receiving a staggering \$1,782,934.86. The Demand Letter emphasized that pursuant to Section 2(h)(ii) of the Settlement Agreement the Ginarte Firm’s entitlement must be calculated from the Legal Fee alone, regardless of any “Dilutive Payments,” and that Mr. Schwitzer would personally guarantee payment of any shortfall. Accordingly, the Demand Letter called for the outstanding \$150,000 to be paid within seven (7) days, failing which the Ginarte Firm would pursue all available remedies under the Settlement Agreement and applicable law.

To date, this firm has received no response from Messrs. Schwitzer and Garcia. The Ginarte Firm therefore respectfully requests that the Court revive the action and schedule a conference to establish a discovery schedule.

We appreciate the Court’s time and attention to this matter.

Respectfully submitted,

ROBERT & ROBERT PLLC

*Michael Farina*

MICHAEL FARINA

cc: All Counsel of Record (by e-mail)

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<sup>1</sup>  $\$3,750,000 \div 3 = \$1,250,000$ ;  $\$1,250,000 \div 2 = \$625,000$ .

<sup>2</sup>  $\$950,000 \div 2 = \$475,000$ .

# **EXHIBIT “1”**

Exhibit A

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

-----X  
GINARTE GALLARDO GONZALEZ  
& WINOGRAD, LLP,

Plaintiff,

-against-

WILLIAM SCHWITZER, WILLIAM SCHWITZER  
& ASSOCIATES, P.C., GIOVANNI C. MERLINO,  
BARRY AARON SEMEL-WEINSTEIN,  
BETH MICHELLE DIAMOND, RENE G. GARCIA,  
THE GARCIA LAW FIRM, P.C.,  
MIGNOLIA PENA, AND JANILDA GOMEZ,

Defendants.  
-----X

Index No: 159991/2018

**STIPULATION  
AND ORDER OF  
DISCONTINUANCE  
WITHOUT PREJUDICE**

**WHEREAS**, the parties have entered into a Settlement Agreement and General Release dated November ~~17~~, 2022 to resolve the above-captioned action (the "Settlement Agreement");

January 17, 2022

**WHEREAS**, the parties have agreed to the discontinuance of this matter without prejudice, on the conditions that: (i) this Court retain jurisdiction over this matter for purposes of enforcement of the Settlement Agreement; and (ii) upon the occurrence of certain events set forth in the Settlement Agreement, this matter shall be revived before this Court under the same index number in the procedural posture as existed immediately prior to entry of this order, but with all statute of limitations and laches defense expressly waived by defendants; and

**WHEREAS**, good cause appearing:

**IT IS HEREBY STIPULATED, ORDERED, ADJUDGED AND DECREED** by and between the undersigned attorneys for the respective parties herein, with the Court's consent and decree, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed or a conservatee and no person not a party has an interest in the subject matter of the action:

1. The above-captioned action be and the same hereby is discontinued without prejudice and without costs to any party against the other;
2. This Court shall retain jurisdiction over this matter for purposes of enforcement of the Settlement Agreement; and

3. Upon written notice by any party to the Court of the occurrence of certain events set forth in the Settlement Agreement, this matter shall be revived and reopened before this Court under the same caption and index number in the procedural posture as existed immediately prior to the entry of this stipulation and order but with all statute of limitations and laches defenses expressly waived by defendants.

**IT IS FURTHER STIPULATED AND AGREED** that this Stipulation may be executed in counterparts and that e-mail or facsimile signatures shall be deemed originals and may be filed with the Court without further notice.

Dated: New York, New York

~~November 17~~ 2023  
~~January~~

**ROBERT & ROBERT PLLC**

  
Clifford S. Robert

Michael Farina

526 RXR Plaza

Uniondale, New York 11556

(516) 832-7000

*Attorneys for Plaintiff Ginarte Gallardo  
Gonzalez & Winograd, LLP*

Dated: New York, New York

November \_\_, 2022

**WALDEN MACHT & HARAN LLP**

  
Georgia K. Winston

Daniel A. Cohen

One Battery Park Plaza, 34<sup>th</sup> Floor

New York, New York 10004

(212) 335-

200 Park Avenue

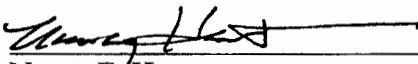
New York, New York 10166

*Attorneys for Defendants Rene G. Garcia  
and the Garcia Law Firm, P.C.*

Dated: New York, New York

~~November 17~~ 2023  
~~January~~

**GIBSON, DUNN & CRUTCHER LLP**

  
Nancy E. Hart

200 Park Avenue

New York, New York 10166

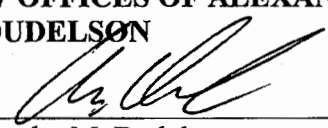
(212) 351-4000

*Attorneys for Defendants William Schwitzer,  
William Schwitzer & Associates, P.C.,  
Giovanni C. Merlino, Barry Aaron Semel-  
Weinstein, Beth Michelle Diamond*

Dated: New York, New York

~~November 12~~, 2022  
~~January~~

**LAW OFFICES OF ALEXANDER  
M. DUDELSON**

  
Alexander M. Dudelson

26 Court St., Ste. 2306

Brooklyn, New York 11242

(718) 855-5100

*Attorneys for Defendants Mignolia Pena  
and Janilda Gomez*

**SO ORDERED.**

  
Hon. James d'Auguste

3. Upon written notice by any party to the Court of the occurrence of certain events set forth in the Settlement Agreement, this matter shall be revived and reopened before this Court under the same caption and index number in the procedural posture as existed immediately prior to the entry of this stipulation and order but with all statute of limitations and laches defenses expressly waived by defendants.

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be executed in counterparts and that e-mail or facsimile signatures shall be deemed originals and may be filed with the Court without further notice.

Dated: New York, New York  
November \_\_, 2022

**ROBERT & ROBERT PLLC**

\_\_\_\_\_  
Clifford S. Robert  
Michael Farina  
526 RXR Plaza  
Uniondale, New York 11556  
(516) 832-7000  
*Attorneys for Plaintiff Ginarte Gallardo  
Gonzalez & Winograd, LLP*

Dated: New York, New York  
~~November \_\_, 2022~~  
January 17, 2023

**WALDEN MACHT & HARAN LLP**

\_\_\_\_\_  
*[Signature]*  
Georgia K. Winston  
Daniel A. Cohen  
One Battery Park Plaza, 34<sup>th</sup> Floor  
New York, New York 10004  
(212) 335-  
200 Park Avenue  
New York, New York 10166  
*Attorneys for Defendants Rene G. Garcia  
and the Garcia Law Firm, P.C.*

Dated: New York, New York  
November \_\_, 2022

**GIBSON, DUNN & CRUTCHER LLP**

\_\_\_\_\_  
Nancy E. Hart  
200 Park Avenue  
New York, New York 10166  
(212) 351-4000  
*Attorneys for Defendants William Schwitzer,  
William Schwitzer & Associates, P.C.,  
Giovanni C. Merlino, Barry Aaron Semel-  
Weinstein, Beth Michelle Diamond*  
Dated: New York, New York  
November \_\_, 2022

**LAW OFFICES OF ALEXANDER  
M. DUDELSON**

\_\_\_\_\_  
Alexander M. Dudelson  
26 Court St., Ste. 2306  
Brooklyn, New York 11242  
(718) 855-5100  
*Attorneys for Defendants Mignolia Pena  
and Janilda Gomez*

SO ORDERED.



JAN 26 2023

Hon. James d'Auguste

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# **EXHIBIT “2”**

LAW OFFICES  
**ROBERT & ROBERT PLLC**

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NEW YORK, NEW YORK 10165\*  
(212) 858-9270

\*NOT FOR MAIL OR SERVICE OF PROCESS

WWW.ROBERTLAW.COM

August 1, 2025

**VIA FEDEX**

William Schwitzer, Esq.  
William Schwitzer & Associates, P.C.  
820 2nd Avenue, 10th Floor  
New York, New York 10017

Rene G. Garcia, Esq.  
The Garcia Law Firm, P.C.  
112 Madison Ave.  
New York, New York 10016

Re: Notice of Default Under Settlement and General Release dated January 17, 2023

Dear Messrs. Schwitzer and Garcia:

As you are aware, this firm represented Ginarte Gonzalez & Winograd, LLP f/k/a Ginarte Gallardo Gonzalez & Winograd, LLP (the “Ginarte Firm”) in the action captioned *Ginarte Gallardo Gonzalez & Winograd, LLP v. William Schwitzer, et al.*, Index No. 159991/2018 (Sup. Ct. N.Y. County) (the “Action”). That Action was resolved in early 2023 through a Settlement Agreement and General Release dated January 17, 2023 (the “Agreement”).

Please accept this letter as written notice pursuant to Section 4 of the Agreement titled “Default,” regarding your failure to remit the full payment owed to the Ginarte Firm in connection with the action captioned *Santos S. Sanchez Fuentes v. YJL Broadway Hotel, LLC*, et al., Index No. 160915/2017 (Sup. Ct. N.Y. County) (the “Sanchez Fuentes Case”).

Section 2(d) of the Agreement provides: “In the event that any attorneys’ fees are earned on the Sanchez Fuentes Case, including by settlement, verdict or otherwise, the Parties agree that the Ginarte Firm shall be entitled to 50% of the Legal Fee[.]” The term “Legal Fee” is defined in the Agreement as “**one third (1/3) of the total recovery on a Subject Case**, whether by settlement, verdict or otherwise.” (emphasis added).

The Ginarte Firm understands that the Sanchez Fuentes Case resolved for \$3,750,000, resulting in a Legal Fee of \$1,250,000. Under the Agreement, the Ginarte Firm is entitled to 50% of that amount, or \$625,000. However, instead of remitting the full \$625,000, you remitted only \$475,000, resulting in a shortfall of \$150,000.



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**ROBERT & ROBERT PLLC**

William Schwitzer, Esq.  
Rene G. Garcia, Esq.  
August 1, 2025  
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According to the Closing Statement filed by William Schwitzer & Associates, P.C. (the “Schwitzer Firm”) with the Office of Court Administration on July 8, 2025, despite the \$3,750,000 recovery, the client received only \$500,000, the reported total attorney’s fee was \$950,000 (rather than \$1,250,000), and Case Cash received a staggering \$1,782,934.86.

Even if you unilaterally agreed to reduce the Legal Fee in the Sanches Fuentes Case, that decision does not affect the Ginarte Firm’s entitlement under the Agreement. Section 2(h)(ii) of the Agreement explicitly provides:

The Schwitzer-Garcia Parties acknowledge that the Ginarte Firm’s entitlement to attorneys’ fees on the Subject Cases **reflects a percentage of Legal Fees earned on each case, not a lesser amount that may ultimately be recovered by the Schwitzer-Garcia Parties** as a result of any fees owing to other counsel, including counsel which may be or have been substituted for any for the Schwitzer-Garcia Parties, any referring attorneys, co-counsel, trial counsel or appellate counsel, or as a result of other fees or expenses that would, directly or indirectly, dilute the Legal Fee (“Dilutive Payments”).

(emphasis added).

Section 2(h)(ii) of the Agreement further provides: “the Ginarte Firm’s entitlement to attorneys’ fees in the Subject Cases shall be **calculated based upon the Legal Fee only, and without regard to any such Dilutive Payments**” and that if “the attorneys’ fees recovered by the Schwitzer-Garcia Parties on a Subject Case[] are insufficient to satisfy the Ginarte Firm’s entitlement hereunder, Schwitzer hereby agrees to **personally guarantee** the full and prompt payment of **any shortfall amount** to the Ginarte Firm as and when the same shall be due and payable.” (emphasis added).

**Accordingly, demand is hereby made that you cure this default by remitting the outstanding \$150,000 to the Ginarte Firm within seven (7) calendar days from the date of this letter.** If payment is not received within this time period, the Ginarte Firm will pursue all available remedies under the Agreement and applicable law without further notice.

LAW OFFICES  
**ROBERT & ROBERT PLLC**

William Schwitzer, Esq.  
Rene G. Garcia, Esq.  
August 1, 2025  
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Should you have any questions, please feel free to contact me.

Very truly yours,

ROBERT & ROBERT PLLC

*Clifford S. Robert*

CLIFFORD S. ROBERT