

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

[SEALED],

Plaintiff,

v.

[SEALED],

Defendant.

Index No. 101478/2015
Filed under Seal in Camera Pursuant to
NEW YORK FALSE CLAIMS ACT, N.Y.
STATE FIN. LAW § 190(2)(b)

FILED UNDER SEAL PURSUANT TO
NEW YORK FALSE CLAIMS ACT, N.Y. STATE FIN. LAW § 190(2)(b)

-NOT FOR POSTING ON ELECTRONIC CASE LISTINGS-

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

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. THE BAYROCK QUI TAM LITIGATION
PARTNERSHIP,

Plaintiff,

- against -

BAYROCK GROUP LLC; TEVFIK ARIF; JULIUS
SCHWARZ; FELIX SATER; BRIAN HALBERG;
ALEX SALOMON; JERRY WEINRICH;
SALOMON & COMPANY PC; AKERMAN
SENTERFITT LLP; DUVAL & STACHENFELD
LLP; KRAMER LEVIN NAFTALIS & FRANKEL
LLP; BRUCE STACHENFELD; NIXON
PEABODY LLP; ADAM GILBERT; ROBERTS &
HOLLAND LLP; ELLIOT PISEM; BAYROCK
SPRING STREET LLC; BAYROCK WHITESTONE
LLC; BAYROCK CAMELBACK LLC; BAYROCK
MERRIMAC LLC; AND BAYROCK GROUP INC.,

Defendants.

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NEW YORK FALSE CLAIMS ACT,
STATE FIN. LAW § 190(2)(b)

**New York State's Notice of Election to Decline Intervention
Pursuant to State Finance Law § 190(2)(f)**

Pursuant to the New York False Claims Act (State Finance Law § 190(2)(f)), the State of New York (the "State") hereby notifies the Court of its decision not to supersede and convert this action into a civil enforcement action, or to intervene therein.

Pursuant to 13 N.Y.C.R.R. § 400.4(c), the Bayrock Qui Tam Litigation Partnership, as the *qui tam* Plaintiff, has 30 days to decide whether to proceed with the action. If the *qui tam* Plaintiff elects to proceed with the action, the *qui tam* Plaintiff shall so advise the Court and the State, and cause the Complaint to be unsealed. **The State is concerned, however, that the exhibit to the Complaint appears to be a document sealed by order of the Southern District of New York.** See *Kriss v. Bayrock Group LLC*, No. 10 Civ. 3959, dkt. #3 (S.D.N.Y. May 14, 2010).

Accordingly, the State respectfully requests that the Court maintain the seal over the exhibit until the Southern District of New York issues an unsealing order, or until this Court otherwise decides that unsealing is appropriate. The State also respectfully requests that the Court lift the seal in part for the sole purpose of allowing the State to share the *qui tam* complaint and exhibit with courts of the Southern and Eastern Districts of New York and/or relevant law enforcement entities in order to inform them of the potential violation of the Southern District's order.

Pursuant to N.Y. State Fin. Law § 190(2)(f), if the *qui tam* Plaintiff elects to proceed with the action, the *qui tam* Plaintiff shall provide the State or any applicable local government with a copy of any document filed with the Court on or about the date it is filed, or any order issued by the Court on or about the date it is issued. The *qui tam* Plaintiff shall also notify the State or any applicable local government within five business days of any decision, order or verdict resulting in judgment in favor of the State or local government. *See* N.Y. State Fin. Law § 190(2)(f).

If the Complaint is unsealed, the State's regulations require that the *qui tam* Plaintiff shall serve the Complaint on Defendants pursuant to applicable law. *See* 13 N.Y.C.R.R. § 400.4(c)(1). The State respectfully requests, however, that **the Court order the *qui tam* Plaintiff not to serve the exhibit to the Complaint while it remains subject to this Court's seal.**

If the *qui tam* Plaintiff elects not to proceed with the action, the State's regulations direct that the *qui tam* Plaintiff may voluntarily discontinue the action, without an order and without unsealing the action, by filing with the Court a notice of discontinuance and serving a copy of this notice on the State, which may move to unseal the Complaint. 13 N.Y.C.R.R. § 400.4(c)(2)(i).

Alternatively, if the *qui tam* Plaintiff elects not to proceed with the action, it may also seek to voluntarily discontinue the action by order of Court by making an *in camera* motion to unseal the Complaint and dismiss the action. 13 N.Y.C.R.R. § 400.4(c)(2)(ii). Should the *qui tam* Plaintiff seek such unsealing, the State would likely respectfully request that this Court maintain the seal over

the exhibit to the Complaint until the Southern District of New York issues an unsealing order, or until this Court otherwise decides that unsealing is appropriate.

The State requests that, should either the *qui tam* Plaintiff or Defendants propose that this action be settled, this Court solicit the written consent of the State before ruling or granting its approval. The State may not be bound by an act of the *qui tam* Plaintiff. N.Y. State Fin. Law § 190(5)(a).

The State reserves its right to order any deposition transcripts.

The State also reserves its right to intervene in this action, for good cause. N.Y. State Fin. Law § 190(5)(a).

A proposed order accompanies this notice.

Dated: New York, New York
December 21, 2015

Respectfully submitted,

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