

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART B

CHRISTIAN GRAY,

Tenant-Petitioner,

-against-

AMERICAN PACKAGE COMPANY, INC.,

Owner-Respondent,

-and-

THE DEPARTMENT OF HOUSING
PRESERVATION AND DEVELOPMENT,

Respondent.

Index No. HP 6086/2020

**STIPULATION OF
SETTLEMENT**

SO-ORDERED

J.H.C.

IT IS HEREBY STIPULATED AND AGREED, by the Petitioner, Christian Gray ("Petitioner") and Owner-Respondent, American Package Company, Inc. ("Respondent") (collectively, the "Parties") and their undersigned counsel, that this proceeding is settled upon the following representations, promises, terms and conditions:

Without admitting any wrongdoing, fault, or any of the allegations set forth in Petitioner's Verified Petition, dated June 29, 2020 ("Petition"), Respondent has retained a licensed and insured mold remediation named Serve Pro (emergency contact is Lisa Mulcahy whose email address is lmulcahy@servprohoboken.com and cell phone # 551-226-1997) company ("Mold Remediation Company") to perform the scope of work annexed hereto as **Exhibit 1** ("Remediation Work") in apartment G21 ("Apartment") in the building located and known as 97 Green Street, Brooklyn, New York 11222 ("Building").

1. The Remediation Work shall commence on July 20, 2021 with regard to the preparation work with the remediation work to commence on July 21, 2021 ("Renovation Work Commencement Date"). The remediation company will file the Post Remediation Assessment form and Mold Remediation Certification as required by NYC EPA.

2. Respondent shall have unfettered access to the Apartment until all the Remediation Work is completed.

3. Respondent's mold inspection company, ALC Environmental ("ALC") and Petitioner's mold inspection company, Olmstead Environmental Services ("Olmstead") shall be permitted to be present during the Remediation Work. Petitioner and Olmstead shall not interfere with the Remediation Work. Petitioner and Respondent landlord shall not be present during the Remediation Work.

4. Upon completion of the Remediation Work ("Completion Date"), ALC shall inspect and test the Apartment to ensure that the Remediation Work has been completed and prepare a written report ("ALC Post Remediation Report"). Respondent's counsel shall provide Petitioner's counsel with a copy of the ALC Post Remediation Report by e-mail at mbs@goodfarblaw.com.

5. Within 5 days ("Olmstead Inspection Deadline") of Respondent's counsel delivering a copy of the ALC Post Remediation Report to Petitioner's counsel, Olmstead shall inspect and test the Apartment to ensure that the Remediation Work has been completed and prepare a written report ("Olmstead Post Remediation Report"). Petitioner's counsel shall provide Respondent's counsel with a copy of the Olmstead Post Remediation Report by email at DSkaller@bbgllp.com within 14 days of the Olmstead Inspection Deadline. In the event Olmstead fails to inspect and test the

Apartment by the Olmstead Inspection Deadline, Petitioner shall forfeit and waive its right to inspect and test the Apartment and shall not be permitted to restore this proceeding or commence a proceeding or action to challenge ALC's report or that the Remediation Work has not been completed.

6. In the event that ALC and Olmstead agree that the Remediation Work is completed after the Completion Date ("Completion Confirmation Date"), this proceeding shall be discontinued and the Parties shall forthwith execute and file a stipulation of discontinuance, with prejudice.

7. In the event ALC and Olmstead cannot agree that the Remediation Work has been completed or additional remediation work is necessary, either party may restore this proceeding, by notice of motion, for a hearing on the sole issue of whether the Respondent did not comply with the agreed upon Remediation Work or any additional work that either or both ALC and Olmstead believes should have been performed as being necessary and in such case the court will hold a hearing to determine if the additional disputed work is necessary. In the event Petitioner establishes that the Remediation Work or additional disputed work was not completed, the Court shall issue an order or Respondent will agree to perform the outstanding Remediation Work to be completed. In the event Respondent establishes that the Remediation Work was completed, this proceeding shall be dismissed, with prejudice. The prevailing party shall be entitled to an award of attorneys fees with regard to fees incurred after the Completion Date.

8. In the event ALC and Olmstead agree that the Remediation Work was not completed after the Completion Date, the Mold Remediation Company shall

complete the agreed upon outstanding Renovation Work and the Parties shall repeat the process as stated in paragraphs five (5) through nine (9) herein.

9. The Parties represent and acknowledge that this proceeding may only be restored for purposes of enforcing compliance with either Parties' obligations stated in this Stipulation regarding the Remediation Work or for additional disputed work.

10. For the valuable consideration set forth above and with the exception of the rights and obligations arising pursuant to this Stipulation, this Stipulation shall constitute the parties' accord and satisfaction and mutual release of any and all demands, rights, claims, remedies, actions, causes of actions or liabilities (collectively referred to herein as "claims") that any party hereto may have against any other party hereto or against representatives, heirs, successors, assigns, officers, directors, partners, agents, or employees of the other contained in Petition from the beginning of the world through the date of this Stipulation.

11. Both parties reserve their claims and defenses with respect to attorneys fees and cost incurred by the respective parties.

12. It is specifically understood and agreed by and between the parties that the within Stipulation is the result of extensive negotiations between the parties and that both parties shall be deemed to have drawn these documents in order to avoid any negative inference by any court as against the preparer of the document.

13. This Stipulation supersedes and revokes all previous negotiations, arrangements, letters of intent, representations, and information conveyed, whether oral or in writing, between Petitioner and Respondent or their respective representatives or any other person purporting to represent Petitioner and Respondent pertaining to this

proceeding. All prior statements, understandings or memoranda shall be merged into the terms of this Stipulation and shall not survive. Except as otherwise provided in this Stipulation, no subsequent alteration, amendment, change or addition to this Stipulation shall be binding upon Petitioner and Respondent, unless in writing and signed by the party against whom enforcement of the alteration, amendment, change or addition is sought.

14. This Stipulation is entered into after full investigation. Neither party has relied upon any statement or representation not specifically embodied in this Stipulation. Each party has had the opportunity to retain counsel and review this document with a counsel of their choosing.

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

16. Facsimile, electronic or PDF signatures shall be deemed originals.

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.

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Petitioner

Anne M. Broomfield, Esq.

A handwritten signature in black ink, appearing to read 'Christian Gray', written in a cursive style.

By: _

Christian Gray

Exhibit 1

Mold Abatement Scope of Work – 97 Green St. Apartment #G21 Brooklyn, NY

SCOPE OF WORK

Mold **abatement** at 97 Green St. Apartment #G21 Brooklyn, NY – See **attached** diagram in this document.

1. Gut demolish rooms 1, 2 and 3 as indicated. This includes walls and flooring to the concrete slab and remove ceilings. Remove ceiling tiles and discard any insulation above the ceiling where present. Clean any visible staining or visible mold growth on the wood deck above the ceiling. Wood framing should be cleaned.
2. Remove the bathroom raised floor under the tub and how water heater. This will require removal of the hot water heater and tub. Clean and save the tub and HW heater.
3. Remove the bathroom sheetrock wall shared with the kitchen. Inspect the wall cavity and the back of the cabinets.
4. Move and save the washer and dryer outside the bathroom. **Remove** the sheetrock wall behind the washer and dryer.
5. In rooms 1 and 2 remove the sheetrock to the wall cavity and do not **damage** the neighbors side of the wall.
6. In room 2 remove the lower 4 feet of the wall shared with the common hallway.
7. In the hallway between rooms 3 and rooms 1 and 2 **remove** the ceiling. Clean the loft above the ceiling and remove insulation and clean visible staining or visible mold growth on the wood deck
8. Cut four 2 by 2 ft. probes along the length of the wall into the living room wall shared with the **neighbor** into the wall cavity. Inspect for mold growth.
9. In the living room cut probes into the ceiling to the wood deck and inspect for mold.
10. At **completion** of the work service and clean the air handling unit.

Commented [JG1]: Except as noted in 6, below.

Commented [JG2]: I would require only 2 feet to expose and examine.

GENERAL CONDITIONS

1. The contractor will be licensed by the New York State Department of Labor as a mold abatement **contractor**.
2. All workers will be certified mold abatement workers by the New York State Department of Labor.
3. The contractor shall inform employees of the potential health risk for Contractor's supervisors and workers during microbial remediation is exposure to or contact with massive **concentrations** of fungi. Risks include allergic respiratory disease (for example, asthma and hypersensitivity pneumonitis).

WORK AREA PROCEDURES

1. **Remove** all movable objects from each work area prior to **beginning** the work. Move and protect the washer and dryer, tub and HW heater.
2. The **contractor** shall construct containment barriers around each work area work area and over each door inside the work area. Plastic sheeting should be used to isolate and enclose the demolition areas. 6-mil flame retardant **polyethylene** sheeting should be secured to existing structures using duct or other suitable specialty tape), spray adhesives,

Mold Abatement Scope of Work – 97 Green St. Apartment #G21 Brooklyn, NY

staples or any other combination thereof to ensure the integrity of the barrier for the duration of the work.

3. The **contractor** shall be responsible to provide **employee** fall protection to comply with OSHA construction standards when necessary when working in loft areas. Fall arrest equipment if used must comply with the most current ANSI standard.
4. Floors, walls, and stationary non-colonized objects in the enclosed containment work area should be covered by polyethylene **sheeting** according to the professional judgment of the Remediation Contractor and **Environmental** Consultant.
5. The HVAC systems serving the work areas shall be shut down and the duct outlets sealed with six mil plastic. The filters should be removed and disposed of.
6. The contractor shall install and activate negative air filtration (AFDs) systems that provide four air changes per hour in each work area. The devices and work area set up will establish at a minimum, a **negative** air pressure **differential** of 0.02 inches of water inside the work area relative to areas outside the containment before remedial operations begin. This air pressure differential shall be maintained until the Environmental Consultant has **determined** that the work area has passed clearance inspections and testing. The **Contractor** shall **provide** sufficient filters for replacement as necessary or as required by applicable regulations.
7. Use of **detergent** solution for damp wiping and for cleaning of dust is permitted. Surfaces to be cleaned should be damp wiped but not soaked.
8. A HEPA filter vacuum cleaner should be used to collect any dust and debris. All floors and adjacent surfaces should be cleaned with a biocide solution as a final step.
9. The **Contractor** shall utilize ground fault circuit **interrupters** for all electrical equipment including vacuum cleaners, lights, power tools, and negative air machines.
10. As waste is **removed**, it must be placed into a disposal **container promptly**. Contaminated materials shall be disposed of in sealed 6 mil bags. All waste bags will be double bagged. Bags will be taped to form an air-tight seal and labeled **appropriately**. Two layers of wrapping or double **bagging** shall be used.
11. Labels and all necessary signs are to be in accordance with OSHA regulations.
12. The contractor will dispose of all waste as construction debris.
13. During the actual remediation, the **Contractor** shall not leave debris in the yard or property, incinerate debris, dump waste by the road or in an unauthorized dumpster, or introduce microbial- **containing** water into storm or sanitary systems.
14. The Contractor shall clean the work area to be free of all dust and debris, as specified, after removal work is complete and the **Environmental** Consultant has conducted and **approved** the visual inspections.
15. After cleaning, the Contractor shall use detergent solution on non-porous **interior** surfaces by damp wiping and HEPA vacuum porous/water sensitive materials.
16. The Contractor shall remove the final containment barriers, as specified, after the Environmental Consultant approves the area, based on the inspection and clearance sampling of the containment area.

Commented [JG3]: Since the entire apartment will be cleaned at the end...one containment (limited) will be needed. No need to protect a surface that will be removed or cleaned.

Commented [JG4]: Not a fan of biocide. We are paying the contractor to remove the visible growth, and to remove wet materials. If conditions for growth are eliminated, then biocide is an unneeded chemical exposure.

Commented [JG5]: No need to seal up the waste. It is construction debris. Should be maintained moist and covered if transported through occupied areas.

Commented [JG6]: Not a thing. ALL water is microbial containing. IT is a good thing!

Commented [JG7]: I prefer simple household detergent

WORKER PROTECTION

1. All workers and supervisors shall have received medical approval to wear a respirator as per OSHA 29 CFR 1910.134. The Contractor shall provide workers with personally

Mold Abatement Scope of Work – 97 Green St. Apartment #G21 Brooklyn, NY

issued and marked full-face respiratory protection equipment **approved** by NIOSH/MSHA. As a **minimum**, respiratory **protection** shall consist of full-face air purifying respirators with high efficiency cartridges, and if required, acid gas (chlorine) cartridges, organic vapor(s) cartridges, or other respiratory protective equipment necessary **to-prevent** inhalation or aerosolized disinfectant. Disposable respirators are not permitted.

2. The Contractor shall ensure that workers do not remove respirators to eat, drink, **smoke**, chew gum or tobacco, or apply cosmetics in the enclosed work areas. Facial hair interfering with the seal of the mask will not be permitted on any personnel working or **entering** the contaminated area.
3. The Contractor shall provide workers with sufficient sets of protective disposable **clothing**, consisting of full-body coveralls, head covers, gloves, and 18-inch high boot type covers in sizes to properly fit individual workers. All workers shall wear Tyvek suits with attached boots, or the **equivalent**. Gloves will include latex exam gloves or work gloves. Integral boot/head cover/coveralls are acceptable. All persons entering the enclosed work area shall don disposable **clothing** over street clothes before **entering** the enclosed work area.
4. The Contractor shall provide eye **protection** (for example, full-face respirator) and hard hats, as required by job **conditions** or by applicable safety **regulations**. Reusable **equipment** (for example, footwear, hard hats) shall be left in the **contaminated** enclosed work area until the end of the remedial work. At that time such items shall be decontaminated for reuse.
5. The Contractor shall provide authorized visitors with respiratory protection **equipment**, a set of suitable protective gloves, and footwear, sizes for proper fit, suitable **protective** disposable **clothing**, headgear, gloves, and footwear, sizes for proper fit, whenever they are required to enter the enclosed work area. The **Contractor** shall not under any circumstances permit any person to enter the work areas without the **appropriate** protective clothing and equipment.

CONTAINMENT EXITING PROCEDURES

1. Every time a worker leaves the work area, before leaving the air lock at the **entrance** to the work area, each worker shall HEPA vacuum all gross contamination and debris from outer layer of protective clothing.
2. Remove protective clothing (disposable coveralls, head cover, gloves, and footwear) in the work area and deposit the clothing in an impermeable bag or **container**.

INSPECTIONS

1. The **Environmental** Consultant shall conduct an initial inspection of the work area containment before remediation work commences.
2. The Environmental Consultant shall conduct inspections after cleanup is **complete** to **determine** if removal of visually **contaminated** and other scheduled materials is **complete**.
3. The contractor shall re-clean the work area, if it fails the Environmental Consultant's clearance inspection and testing. The Environmental Consultant shall then perform

Mold Abatement Scope of Work – 97 Green St. Apartment #G21 Brooklyn, NY

additional clearance inspections, and the Contractor shall re-clean if necessary until the work area passes **inspections** and testing.

4. The Client or Environmental Consultant shall have **authority** to stop work when any provision of these specifications are not followed or an unsafe condition exists. The stoppage of work shall continue until all **deficiencies** have been corrected. All work stoppages must be initiated in writing. Additional time and labor due to the work stoppage shall be at the Contractor's own expense. **Recommencement** of work shall not be initiated without written authorization from the Environmental Consultant or Client.

CLEARANCE TESTING

Each work area must pass a visual inspection by the building **environmental** consultant. Evidence of **dampness**, visible debris, or dust will require **additional** cleaning and drying. The **environmental** consultant will use settled dust **sampling** methods and direct microscopic exam of samples taken from work area surfaces.

At **completion** of all work and with the work area ready for reconstruction air **sampling** will be used to confirm that mold abatement is complete. All air testing will be done with the negative pressure systems shut down for at least 24 hours. If the work area airborne spore levels significantly exceed the outdoor levels or if the rank order of mold species inside does not reflect the outdoors the work area will be further cleaned. The presence of significant numbers of *Stachybotrys*, *Aspergillus/Penicillium* or *Chaetomium* spores will be considered unacceptable. Air sampling for mold spore levels will be conducted using spore trap methods using treated microscope slides or an equivalent method such as air-o-cell cassettes. Sample volumes shall be taken in accordance with the published analytical method and in consultation with the microscopist. The samples will be analyzed by an **experienced** mycologist.

Commented [JG8]: What is significant?

Mold Abatement Scope of Work – 97 Green St. Apartment #G21 Brooklyn, NY

