

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WHOLE FOODS MARKET GROUP, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 17-cv-01079-RCL
)	
WICAL LIMITED PARTNERSHIP,)	
)	
Defendant.)	

STIPULATION OF DISMISSAL

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiff, Whole Foods Market Group, Inc. (“Whole Foods”), and Defendant, Wical Limited Partnership (“Wical”), by agreement and pursuant to the Third Amendment to Lease dated February 10, 2020 (the “Settlement Agreement”), respectfully move the Court to enter the attached proposed order providing for the distribution of funds held by the Court and, except to the limited extent necessary to enforce the Settlement Agreement, dismissal of the captioned matter with prejudice. In support of this request, the Parties stipulate as follows:

1. On June 6, 2017, Whole Foods filed a Verified Complaint for Declaratory, Injunctive, and Other Relief, relating to a Lease Agreement between the parties (Dkt. 1).
2. On June 22, 2018, this Court entered an Order (Dkt. 54) (the “Escrow Order”) granting Whole Food’s Motion for Judicial Escrow of Plaintiff’s Rents (Dkt. 38) and ordering the Clerk of the Court to accept Whole Food’s monthly rental payments in escrow.
3. Pursuant to the Escrow Order, Whole Foods has deposited rental payments in excess of \$2,701,147.52 with the Clerk.
4. On February 10, 2020, Whole Foods and Wical entered into the Settlement Agreement, which resolves all matters in controversy in the captioned matter. Pursuant to the

Settlement Agreement, the parties agreed, in part: (i) to file a stipulation requesting the dismissal of this action with prejudice, except to the limited extent necessary to enforce the Settlement Agreement; (ii) that each party shall be responsible for its own costs and attorneys' fees; and (iii) that the balance of funds held in escrow shall be distributed to Wical less the overpayment of real estate taxes by Whole Foods in the amount of \$246,615.37, which sum shall be distributed to Whole Foods.

WHEREFORE, Whole Foods and Wical respectfully request that the Court enter the attached consent order.

Date: February 19, 2020

Respectfully submitted,

WHOLE FOODS MARKET GROUP, INC.

By: /s/ Norman B. Berger
One of its attorneys

Brian P. Waagner (D.C. Bar No. 450823)
Husch Blackwell LLP
750 17th Street, NW, Suite 900
Washington, D.C. 20006
Phone: (202) 378-2355
Brian.Waagner@HuschBlackwell.com
Counsel for the Plaintiff

Moxila A. Upadhyaya (D.C. Bar # 494373)
Kevin W. Weigand (D.C. Bar # 1004998)
Venable LLP
600 Massachusetts Ave., NW
Washington, D.C. 20001
Phone: (202) 344-4690
MAUpadhyaya@Venable.com
KWWeigand@venable.com
Counsel for the Defendant

Of Counsel:

Norman B. Berger
Sandra D. Mertens
Gensburg, Calandriello & Kanter, P.C.
200 West Adams Street, Suite 2425

Chicago, Illinois 60606
Phone: (312) 263-2200
NBerger@gcklegal.com
SMertens@gcklegal.com
Pro Hac Vice
Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that, on February 19, 2020, the foregoing *Consent Motion and Stipulation* was filed electronically in the Electronic Case Filing system and service accomplished pursuant to ECF to counsel of record.

By: /s/ Norman B. Berger

Brian P. Waagner (D.C. Bar No. 450823)
Husch Blackwell LLP
750 17th Street, NW, Suite 900
Washington, D.C. 20006
Phone: (202) 378-2355
Brian.Waagner@HuschBlackwell.com
Counsel for the Plaintiff

Of Counsel:
Norman B. Berger
Sandra D. Mertens
Gensburg, Calandriello & Kanter, P.C.
200 West Adams Street, Suite 2425
Chicago, Illinois 60606
Phone: (312) 263-2200
NBerger@gcklegal.com
SMertens@gcklegal.com
Pro Hac Vice
Counsel for the Plaintiff