

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FRANCESCA ROLON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

WYOMING MALL HIBACHI
RESTAURANT, INC, et al.,

Defendants.

Civil Action No.: 3:24-cv-00232-KM

**DECLARATION OF GERALD D. WELLS, III IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF
CLASS AND COLLECTIVE ACTION**

I, Gerald D. Wells, III, declare as follows:

1. I am a founding member of the law firm of Connolly Wells & Gray, LLP ("CWG"). I am personally involved in the prosecution of this matter.
2. CWG was founded in October of 2013. Prior to this, I was a partner with the law firm of Faruqi & Faruqi, LLP ("F&F"), where I served as both chair and co-chair of the firm's employment practices group. My practice has concentrated on prosecuting wage and hour, ERISA and consumer class actions.
3. I have been involved in this Action from the initial investigation through its resolution.

4. I make this Declaration in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class and Collective Settlement, Certification of Settlement Class, Appointment of Class Counsel, Approval of Proposed Class Notices, and Scheduling of a Final Approval Hearing ("Plaintiff's Motion"), which seeks preliminary approval of the Settlement Agreement.¹ The matters set forth herein are stated within my personal knowledge.

5. Plaintiff, on behalf of herself and a proposed PA Class and FLSA Collective, has agreed to settle all claims against Defendants for alleged violations of the Fair Labor Standards Act ("FLSA"), the Pennsylvania Minimum Wage Act ("PMWA"), and the Pennsylvania Wage Payment Collection Law ("WPCL").

6. I am submitting this declaration to put before the Court certain documents and facts supporting preliminary approval of the Settlement and reasons why I believe the proposed Settlement is fair, reasonable, and adequate.

7. Further, I believe that the proposed Class Notice should be disseminated to the Settlement Class Members as it contains all material terms necessary for them to make a determination as to how they wish to proceed, including whether to opt-out, object, or partake fully in this proposed Settlement.

8. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement with all exhibits thereto.

¹ All capitalized words not otherwise defined in this declaration have the same meaning given them in the Settlement Agreement.

9. Before agreeing to the proposed Settlement, Class Counsel assessed its merits using various factors typically used by counsel in this type of case including the factors used by courts in the Third Circuit to assess the fairness and adequacy of proposed FLSA and Pennsylvania wage and hour law class action settlements. Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate when the applicable factors are considered.

10. This Settlement is a result of good faith bargaining at arm's length, and is the product of extensive negotiations between experienced counsel.

11. CWG has substantial experience in wage and hour matters. It has been appointed class counsel for the settlement classes in multiple class and collective action cases involving analogous claims, including *Williams v. Bob Evans Restaurants, LLC, et al.*, 2:18-cv-1353 (W.D. Pa), *Sudano v. Texas Roadhouse Investments of Beaver PA, LLC et al*, 2:19-cv-00064 (W.D. Pa), and *Vider v. LMT Real Estate, LLC et al*, 2:19-cv-02066 (E.D. Pa).

12. CWG has developed a comprehensive understanding of the merits of the case through our work on the Action. In our view, when we agreed to the proposed Settlement, we had sufficient information in order to make a reasoned judgment about the desirability of settling the case the terms proposed rather than proceeding to trial.

13. In CWG's opinion the Settlement is reasonable as it provides for each member of the Settlement Class to receive real monetary relief.

14. Indeed, based on CWG's review of the payroll records provided by Defendants', Class Counsel believes that that Settlement Amount agreed to represents approximately 100% of the unpaid back wages allegedly owed in this matter.

15. The Settlement Agreement contains no provisions that would be contrary to the purposes of the FLSA or frustrate the implementation of the FLSA in the workplace.

16. As noted above, the Settlement provides for recovery by each individual of the Settlement Class in the form of a Settlement Payment calculated by the Claims Administrator and based upon that individual's total hours worked for Defendant as a Tipped Employee during the Class Period. This ensures an equitable, accurate, and eminently appealing Settlement Payment to all Settlement Class members.

17. My partners and I have significant experience prosecuting complex employee protection cases, including wage and hour class actions.

18. Since its inception, the CWG has been appointed and served as lead or co-lead counsel on behalf of plaintiffs in numerous contested lawsuits alleging violations of federal and/or state wage and hour laws, including the following:

Wintjen v. Denny's Inc. et al, 2:19-cv-00069 (W.D. Pa); *Graham v. Famous Dave's of America*, No. 19-cv-00486 (D. Md); *Casco v. Ponzios*, No. 16-cv-2084 (D. N. J.); *Wright v. Ristorante La Buca, Inc., et al.*, No. 18-cv-2207 (E.D. Pa.); and *Koenig v. Granite City Food & Brewery, LTD, et al.*, No. 16-cv-1936 (W.D. Pa).

19. Further, my firm has successfully obtained numerous other court-approved class settlements as well as settlements on behalf of individual employees in a significant number of analogous wage and hour cases relating to tipped employees, including: *Koenig v. Primanti Corporation D/B/A Primanti Bros., et al.*, No. 16-cv-402 (W.D. Pa.)(granting final approval of \$2.1 million settlement where Plaintiff alleged defendants failed to comply with tip credit notification requirements); *Carrozza v. McKenzie Brewhouse, Inc., et al.*, No. 22-cv-03291 (E.D. Pa.)(granting final approval of \$440,000 settlement where defendants failed to comply with tip credit notifications); *Kotchmar v. Movie Tavern Partners, LP, et al.*, No. 15-cv-04061 (E.D. Pa.) (granting final approval of \$750,000 settlement where plaintiff alleged defendants failed to comply with tip notification requirements); *Graudins v. Kop Kilt, LLC*, No. 14-cv-2589 (E.D. Pa.) (granting final approval for \$300,000 settlement for class of employees at single restaurant who alleged, inter alia, tip credit notification violation); *In re Chickie's and Pete's Wage and Hour Litigation*, Master File No. 12-cv-6820 (E.D.

Pa.)(settlement on behalf of opt-in plaintiffs, obtaining 100% recovery of the back wages allegedly owed)

20. Additionally, serving as co-lead counsel, my firm and I obtained a jury verdict awarding more than \$4.5 million to plaintiff and class members in *Verma v. 3001 Castor, Inc.*, No. 13-cv-3034 (E.D. Pa.), which involved violations of the Pennsylvania wage and hour laws, and was upheld after being appealed to the Third Circuit.

21. Further, my firm's experience and expertise has been recognized by courts across the country. For example, CWG was appointed to the executive committee prosecuting the claims in the consolidated action styled *In re 2014 RadioShack ERISA Litig.*, Master File No. 4:14-CV-00959 (N.D. Tex.) and served as co-lead counsel in the action styled *Gedek v. Perez, et al. (In Re Kodak ERISA Litig.)*, No. 6:12-CV-06051 (W.D.N.Y.), where we helped obtain final approval of a \$9.7 million class settlement. CWG also served as class counsel in *Hellmann v. Cataldo, et al.*, No. 12-CV-2177 (E.D. Mo.), obtaining final approval of \$800,000 for a settlement class in an ERISA action.

22. In short, CWG has extensive experience, has vigorously pursued the interests of the Settlement Class throughout the pendency of this matter and recommends this Settlement be approved.

23. Based upon my experience, as detailed above, I believe this Action meets all the requirements for class certification under of Rule 23 and collective certification under the FLSA.

24. Plaintiff and CWG respectfully submit that the Settlement is an excellent result for the Settlement Class. CWG recommends the Settlement as fair, reasonable, and adequate, and they request that this Court: (1) preliminarily approve the Settlement Agreement, (2) certify the proposed PA Class and appoint CWG as Class Counsel, (3) conditionally certify the proposed FLSA Collective, (4) approve the Class Notice and related notice plan, and (5) set a date for a Final Approval Hearing at least 60 calendar days after the Court enters the preliminary approval order.

I declare under penalty of perjury and based upon my personal knowledge that the foregoing is true and correct. This Declaration was executed on February 13, 2025, in Philadelphia, Pennsylvania.

/s/ Gerald D. Wells III
Gerald D. Wells, III

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FRANCHESCA ROLON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

WYOMING MALL HIBACHI
RESTAURANT, INC, et al.,

Defendants.

Civil Action No.: 3:24-cv-00232-KM

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

Upon consideration of the Parties' request for final approval of the Joint Stipulation of Settlement and Release Agreement ("Settlement Agreement") entered into by and between Plaintiff Franchesca Rolon ("Plaintiff" or "Rolon"), on behalf of herself and the Settlement Class Members, and Defendants, the Court orders and finds as follows:

1. Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.
2. This Court has jurisdiction over the subject matter of this lawsuit, Plaintiff, Settlement Class Members, and Defendants.
3. The Court determines that the Plaintiff is asserting claims on behalf of herself and the Tipped Employees for alleged violations of applicable wage laws,

including the Fair Labor Standards Act (“FLSA”), the Pennsylvania Minimum Wage Act (“PMWA”), and the Pennsylvania Wage Payment Collection Law (“WPCL”).

4. The Court determines that the Settlement, which includes the payment of One Hundred Twenty-Three Thousand, Seven Hundred Fifty U.S. Dollars (\$123,750.00), on behalf of Defendants (“Settlement Amount”), has been negotiated vigorously and at arm’s length by and between Class Counsel and Defendants’ Counsel. The Court further finds that at all times the Plaintiff has acted independently and that the Plaintiff and Class Counsel have fairly and adequately represented the Settlement Class in connection with the Litigation and the Settlement. The Court further finds that the Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

5. The Court determines that the Class Notice transmitted to the Settlement Class, pursuant to the Preliminary Approval Order and in accordance with the Settlement Agreement, is the best notice practicable under the circumstances and included individual notice to all members of the Settlement Class who could be identified through reasonable efforts. The Class Notice, along with the posting of the Class Notice on the website identified in the Class Notice and emailing of the Class Notice, provides valid, due and sufficient notice of the Final Approval Hearing and of the other matters set forth therein, including the terms of the

Settlement Agreement and the Settlement, and thus the Class Notice has satisfied the requirements of due process pursuant to the Federal Rules of Civil Procedure, including Rule 23, the United States Constitution and any other applicable law.

6. Pursuant to Fed. R. Civ. P. 23(b)(3), the Court previously certified a Rule 23 PA Class for settlement purposes only, consisting of:

All former and current Tipped Employees of Defendants who worked in Defendants' Restaurant at any time from January 1, 2022 through February 28, 2024. Excluded from this Settlement Class are all Tipped Employees who submit a timely and valid Request for Exclusion.

7. Pursuant to 29 U.S.C. §216(b), the Court also previously certified a FLSA Collective consisting of:

All former and current Tipped Employees who worked in Defendants' Restaurant at any time from January 1, 2022 through February 28, 2024 and submit a timely and valid Claim Form with the Court.

No evidence has been submitted to the Court that alters the Court's determination that certification of the PA Class and FLSA Collective is appropriate. As such, the Court hereby approves the maintenance of the Litigation as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3). In addition, pursuant to Federal Rule of Civil Procedure 23(g), the Court also hereby appoints the Plaintiff as the representative of the Settlement Class and Connolly Wells & Gray, LLP as Class Counsel.

8. On _____, 2025, the Court held a fairness hearing to which Settlement Class members, including any with objections, were invited. Excluded from the Settlement Class are those persons, identified in Exhibit “A” hereto, who timely and validly submitted a Request for Exclusion.

9. The Court has duly considered and rejected any objections to the Settlement Agreement that were filed. The Court specifically considered each objection and points raised therein. Upon consideration of the objections, the Court holds that no objection raises the types of issues that prevent approval of the Settlement embodied in the Settlement Agreement.

10. The Court finds that the Settlement is fair, reasonable, and adequate and hereby finally approves the Settlement Agreement submitted by the Parties.

11. Based on the Settlement, the Court hereby dismisses the Complaint and the Litigation against Defendants with prejudice on the merits, and judgment is entered pursuant to Federal Rule of Civil Procedure 54(b). As of the Final Effective Date, all release provisions within the Settlement Agreement shall be given full force and effect in accordance with each and all of their express terms and provisions including the Release of Claims set forth in the Settlement Agreement. As set forth in Paragraph 5.1 of the Settlement Agreement, PA Class members are deemed to have released their applicable state law claims and FLSA Collective members are deemed to have released their claims under the Fair Labor Standards Act.

12. As of the Effective Date, all release provisions within the Settlement Agreement shall be given full force and effect in accordance with each and all of their express terms and provisions including the Release of Claims set forth in the Settlement Agreement. As set forth in the Settlement Agreement, Settlement Class Members are deemed to have released their claims under the Fair Labor Standards Act and applicable state laws as set forth in Paragraph 5.1 in the Settlement Agreement.

13. Class Counsel are hereby awarded attorneys' fees in the amount of _____ (the "Attorneys' Fees"). The Attorneys' Fees have been determined by the Court to be fair, reasonable and appropriate. No other fees may be awarded to Class Counsel in connection with the Settlement Agreement absent subsequent Order of this Court. Attorneys' Fees shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.

14. Class Counsel are hereby awarded reimbursement of expenses in the sum of _____ (the "Attorneys' Expenses"). The Attorneys' Expenses have been determined by the Court to be fair, reasonable, and appropriate. No other costs or expenses may be awarded to Class Counsel in connection with the Settlement Agreement absent subsequent Order of this Court. Attorneys' Expenses shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.

15. The Court hereby further finds that the administrative expenses incurred by the Claims Administrator in administering this Settlement are necessary and reasonable. Accordingly, the Court hereby orders all such expenses to be paid in accordance with the terms of the Settlement Agreement.

16. The Plaintiff is hereby awarded a Service Payment in the amount of _____ . The Service Payment has been determined by the Court to be fair, reasonable, and appropriate. The Service Payment shall be paid to Plaintiff in accordance with the terms of the Settlement Agreement. The Plaintiff is also eligible for a share of the payment from the Settlement Amount as a member of the Settlement Class. Other than these payments, no other award shall be awarded to the Plaintiff in connection with the Settlement Agreement.

17. Defendants are hereby ordered to pay all other amounts as set forth in the Settlement Agreement.

18. No other amounts, not otherwise set forth in this Order, authorized by this Court or permitted or required under the Settlement Agreement, shall be paid from the Settlement Amount.

19. The Court finds that the distribution of the Settlement Amount to Settlement Class Members as submitted by the Parties is approved as fair, reasonable, and adequate. The Settlement Amount shall be distributed in accordance with the terms set forth in the Settlement Agreement.

20. Should a Cy Pres Distribution be required under the terms of the Settlement Agreement, the Court hereby selects _____ as the recipient of said Cy Pres Distribution.

21. In the event that the Settlement Agreement is terminated in accordance with its terms, this Order and Judgment shall be rendered null and void, ab initio, and shall be vacated nunc pro tunc, and this Action shall for all purposes with respect to the Parties revert to its status as of the day immediately before the execution of the Settlement Agreement. The Parties shall submit a status report and proposed scheduling order to the Court within fourteen (14) days.

22. The Court retains exclusive jurisdiction to enforce the terms and provisions of the Settlement Agreement and this Order.

23. The Parties are hereby ordered to comply with the terms of the Settlement Agreement and this Order.

SO ORDERED.

BY THE COURT:

HON. KAROLINE MEHALCHICK
UNITED STATES DISTRICT JUDGE

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FRANCHESCA ROLON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

WYOMING MALL HIBACHI
RESTAURANT, INC, et al.,

Defendants.

Civil Action No.: 3:24-cv-00232-KM

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS AND COLLECTIVE ACTION SETTLEMENT**

Before the Court is Plaintiff's Unopposed Motion for Preliminary Approval of Settlement seeking preliminary approval of the settlement (the "Settlement") of this class action asserting alleged violations of, *inter alia*, the Pennsylvania Minimum Wage Act ("PMWA") and as a collective action asserting alleged violations of the Fair Labor Standards Act ("FLSA"). The terms of the Settlement are set out in the Joint Stipulation of Settlement and Release Agreement ("Settlement Agreement") that has been executed by Plaintiff and Defendants and filed with the Court. Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

The Court, having considered the requirements of 29 U.S.C. § 216(b), Federal Rule of Civil Procedure 23, and the papers and Memorandum of Law filed in support of Plaintiff’s Motion to Preliminarily Approve Settlement (“Preliminary Approval Motion”), including specifically the parties’ Settlement Agreement, hereby ORDERS as follows:

I. CLASS FINDINGS

The Court PRELIMINARILY FINDS, for purposes of this Settlement only, that the requirements of the Federal Rules of Civil Procedure and any other applicable law have been met as to the proposed PA Class, in that:

a) The PA Class numbers approximately ___ unique individuals and, therefore, is so numerous that joinder would be impracticable. The PA Class includes individuals that are Tipped Employees who worked in Pennsylvania during the Class Period.

b) Based on the allegations in the Complaint, there are one or more questions of fact and/or law common to the PA Class. Among other things, Plaintiff alleges that Defendants failed to properly pay Tipped Employees by failing to satisfy the notice requirements of the tip credit provisions in the FLSA and PMWA. As such, Plaintiff alleges Tipped Employees were not paid the mandated minimum wage for each and every hour worked.

c) The Plaintiff will fairly and adequately protect the interests of the PA Class in that: (i) the interests of the Plaintiff and the nature of her claims are consistent with those of all members of the PA Class; (ii) there appear to be no conflicts between or among the Plaintiff and the members of the PA Class; and (iii) the Plaintiff and the members of the PA Class are represented by qualified counsel who are experienced in preparing and prosecuting complex class actions;

d) The prosecution of separate actions by individual members of the PA Class would create a risk of: (i) inconsistent or varying adjudications as to individual members of the PA Class that would establish incompatible standards of conduct for the parties opposing the claims asserted in the case; and (ii) adjudications as to individual members of the PA Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede those person's ability to protect their interests; and

e) Common issues of law and fact predominate over any potential individual issues, as the predominant issue is whether Defendants paid Tipped Employees in accordance with applicable wage laws.

II. COLLECTIVE FINDINGS

The Court PRELIMINARILY FINDS, for purposes of this Settlement, that Plaintiff and the Tipped Employees are similarly situated in that:

a) These individuals worked as Tipped Employees at Defendants' Restaurant during the applicable period.

b) Based on the allegations in the Complaint, there are common questions amongst these individuals, including whether Defendants failed to properly pay Tipped Employees by failing to satisfy the notice requirements of the tip credit provisions of the FLSA. In addition, there is also the common question of whether these individuals performed excessive side work and/or work unrelated to their occupation as a Tipped Employee. Consequently, there is the common issue of whether these individuals were not paid properly by Defendants during the applicable period.

III. CERTIFICATION

Based on the findings set out above, the Court hereby certifies the following PA Class for settlement purposes only:

All former and current Tipped Employees of Defendants who worked in Defendants' Restaurant at any time from January 1, 2022 through February 28, 2024. Excluded from this PA Class are all Tipped Employees who submit a timely and valid Request for Exclusion.

As noted above, Plaintiff Franchesca Rolon is an adequate and typical class representative, and the Court hereby appoints her as class representative for the PA Class and the FLSA Collective.

As required by Fed. R. Civ. P. 23(g), the Court also has considered: (i) the work Class Counsel has done in identifying or investigating potential claims in the case; (ii) Class Counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in this case; (iii) Class Counsel's knowledge of applicable wage laws, including the FLSA and PMWA, and how those laws apply to the claims in this cases; and (iv) the resources Class Counsel has committed to representing Plaintiff in this case. Based on these factors, the Court finds that Class Counsel has and will continue to represent fairly and adequately the interests of the Settlement Class. Accordingly, pursuant to Fed. R. Civ. P. 23(g)(2), the Court designates Connolly Wells & Gray, LLP as Class Counsel with respect to the Settlement Class.

In addition, pursuant to 29 U.S.C. § 216(b), the Court hereby conditionally certifies a collective for settlement purposes only consisting of:

Plaintiff and all former and current Tipped Employees of Defendants who worked at Defendants' Restaurant at any time from January 1, 2022 through February 28, 2024 and submit a timely and valid Claim Form with the Claims Administrator.

IV. PRELIMINARY APPROVAL OF SETTLEMENT

The proposed settlement between the parties documented in the Settlement Agreement appears to be fair, reasonable and adequate and in the best interests of the Settlement Class. As such, the proposed settlement is hereby preliminarily approved pending a final hearing on the settlement as provided herein. In addition,

as set forth in Plaintiff's motion, the Parties have agreed upon A.B. Data Group to serve as the Settlement's "Claims Administrator." Based on the Parties' representation, the Court approves the appointment of A.B. Data Group as the Claims Administrator.

V. FINAL APPROVAL HEARING

A Final Approval Hearing pursuant to Fed. R. Civ. P. 23(e) is hereby scheduled for _____, 2025, in Courtroom _____, United States District Court for the Middle District of Pennsylvania, Max Rosenn U.S. Courthouse, 197 South Main Street, Wilkes-Barre, PA 18701, to determine whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should receive final approval by the Court; whether the Settlement Class and its representation by the Plaintiff and Class Counsel satisfy the requirements of Fed. R. Civ. P. 23 and Section 216(b) of the FLSA; whether the FLSA Collective should be granted final collective certification; whether Class Counsel's application for an award for attorneys' fees and reimbursement of litigation expenses and service award for Plaintiff should be granted; and any other issues necessary for final approval of the Settlement.

VI. CLASS NOTICE

The Court hereby APPROVES Class Notice substantially in the same form and with the same content as that attached to the Settlement Agreement as "Exhibit

A,” finding that it fairly and adequately (i) describes the terms and effect of this Settlement Agreement, (ii) provides notice to the Tipped Employees of the time and place of the Final Approval Hearing and (iii) describes how the Tipped Employees may opt into the FLSA Collective by submitting the Claim Form included with the Class Notice, (iv) describes how the recipients of the Class Notice may object to the Settlement or request to be excluded from the PA Class, and (v) describes the implications of opting into or out of the FLSA Collective or Rule 23 Class. The Court further finds that serving the Class Notice to the members of the Tipped Employees is the best notice practicable under the circumstances, and fully satisfies the requirements of due process, the Federal Rules of Civil Procedure, and all other applicable law.

As such, the Court directs the Claims Administrator to disseminate the Class Notice, including where applicable the Notice Packet, to the Tipped Employees in accordance with the terms of the Settlement Agreement. Further, the Parties are directed to establish a website for Class Members to view applicable documents and Court orders in accordance with the Settlement Agreement and as set forth in the Class Notice.

VII. REQUESTS FOR EXCLUSION

Tipped Employees may exclude themselves from the PA Class by sending the Claims Administrator either a (i) Request for Exclusion form or (ii) a letter that states

“I request to be excluded from the settlement in *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 24-cv-00232 (M.D. Pa.). I affirm that I was employed by Defendants as a Tipped Employee on one or more days between January 1, 2022 through February 28, 2024 at Defendants’ Restaurant.” To be considered valid, any Class Member’s request for exclusion must be postmarked on or before the Bar Date and must also include the individual’s full name, address and phone number.

VIII. OBJECTIONS TO SETTLEMENT

Settlement Class members may choose to object to the fairness, reasonableness or adequacy of the Settlement by submitting written objections to the Claims Administrator. All objections to the Settlement must be sent no later than the Bar Date.

Objections, and any other papers submitted for the Court’s consideration in connection with issues to be addressed at the Final Approval Hearing shall be submitted to the Claims Administrator.

Upon receipt of any objection, the Claims Administrator shall follow the procedures set forth in the Settlement Agreement regarding notifying counsel for the Parties. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this Order, unless otherwise ordered by the Court, shall be deemed to have waived, and shall be

foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

Any member of the Settlement Class who files and serves a timely, written objection pursuant to the terms of this Order may also appear at the Final Approval Hearing in person or through counsel retained at that individual's expense. Class Counsel and Defendants' Counsel should be prepared at the Final Approval Hearing to respond to any objections filed by Class Members.

IX. MOTION IN SUPPORT OF FINAL SETTLEMENT APPROVAL, APPLICATION FOR FEE, EXPENSES AND SERVICE PAYMENT

Plaintiff's Motion in Support of Final Approval of Settlement and related relief shall be filed with the Court and served on all counsel of record in accordance with the Court's policies and practices, or no later than _____, 2025. Further, any application by Class Counsel for attorneys' fees and reimbursement of litigation expenses and for a Service Payment for the Named Plaintiff, and all papers in support thereof, shall be filed with the Court concurrently with Plaintiff's Motion in Support of Final Approval of Settlement, or no later than _____, 2025. Copies of such materials shall be available for inspection at the office of the Clerk of this Court and made available on the website identified in the Class Notice.

Until such time as the Court can make a final determination as to the propriety of the Settlement at the Final Approval Hearing, the Parties are hereby ordered to comply with the terms of the Settlement Agreement and this Order.

SO ORDERED.

BY THE COURT:

HON. KAROLINE MEHALCHICK
UNITED STATES DISTRICT JUDGE

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FRANCHESCA ROLON, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

WYOMING MALL HIBACHI
RESTAURANT, INC, et al.,

Defendants.

Civil Action No.: 3:24-cv-00232-KM

REQUEST FOR EXCLUSION FROM A CLASS ACTION SETTLEMENT

By completing and returning this form, I **do not** want to join the class certified under Fed. R. Civ. P. 23 in the above-captioned class action lawsuit. Rather, I request to be excluded from the “PA Class” in *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 24-cv-00232 (M.D. Pa.). I affirm that I was employed by Defendants as a Tipped Employee on one or more days between January 1, 2022 through February 28, 2024 at Defendants’ Restaurant. I understand that this class action lawsuit seeks unpaid minimum wages that may be owed to me under applicable Pennsylvania and federal law. **I understand by submitting this form asking to be excluded from the PA Class, I will not receive the full benefit from this Settlement.**

I further understand that if I **do not** submit this form asking to be excluded from this class action settlement, I will receive my share of the Settlement proceeds

relating to my Pennsylvania state law claims, and I will be deemed to have fully, forever, irrevocably, and unconditionally released, remised, and discharged Defendants, and any of their affiliates, parents, subsidiaries, business units, joint venturers, and related companies, and their past or present officers, directors, shareholders, members, managers, contractors, agents, representatives, or attorneys (collectively referred to as the “Released Persons”), from any and all Pennsylvania wage-related claims from January 1, 2022 through February 28, 2024, including, but not limited to any claims pursuant to the PMWA and the WPCL, that I have, had, might have or might have had against any of the Released Persons that in any way related to any of the facts or claims that were alleged or that could have been alleged in the Amended Complaint, asserted in the Actions, by reason of the negotiations leading to this Settlement, or effectuation of this Settlement, even if presently unknown or un-asserted.

Finally, I understand that in order for this form to be considered valid and thus exclude myself from the PA Class, it must be submitted to the Claims Administrator on or before [insert *Bar Date*].

Date: _____

Printed Name

Signature

EXHIBIT B

Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.
U.S. District Court for the Middle District of Pennsylvania
Civil Action No.: 3:24-cv-232

c/o _____ - Claims Administrator
 [Insert Claims Administrator’s Address]

[Class Member Name] [Class Member Address]	Name/Address Changes (if any): Name: _____ Address: _____ _____ Phone: (_____) _____ - _____
---	--

COMPLETE AND SIGN THIS FORM ONLY IF YOU WISH TO PARTICIPATE IN THE FLSA COLLECTIVE AND RECEIVE YOUR FULL SHARE OF THE SETTLEMENT FUNDS

You must sign and return this Claim Form, POSTMARKED NO LATER THAN [Bar Date] to receive your share of the Settlement.

Your share of the Settlement is based on the number of hours that you worked as a bartender, server, busser, house hibachi chef and/or sushi chef (collectively, a “Tipped Employee”) for ***Wyoming Mall Hibachi Restaurant, Inc., and/or Chuan B. Lin, (collectively “Defendants”)*** during the Class Period. The Class Period extends from January 1, 2022 through February 28, 2024.

Defendants’ records show that, within that period, you worked as a Tipped Employee during the following time period:

[CLASS MEMBER START DATE] to [CLASS MEMBER END DATE]

Based on time records, Defendants calculate that you worked [NUMBER] hours during the Class Period.

IF YOU DO NOT AGREE WITH THE NUMBER OF HOURS SET FORTH ABOVE, THEN PLEASE SUBMIT A WRITTEN, SIGNED DECLARATION TO THE CLAIMS ADMINISTRATOR ON OR BEFORE THE BAR DATE, ALONG WITH DOCUMENTATION TO SUPPORT THE CHALLENGE. SUBMITTING A DISPUTE FORM WILL NOT EXCLUDE YOU FROM THE SETTLEMENT OR THE RULE 23 CLASS. NOR WILL SUBMITTING A DISPUTE FORM INCLUDE YOU IN THE FLSA COLLECTIVE.

IF YOU WISH TO BECOME A MEMBER OF THE FLSA COLLECTIVE, SIGN WHERE DESIGNATED IN THE MIDDLE OF PAGE 2 AND RETURN THIS FORM TO THE CLAIMS ADMINISTRATOR.

TO RECEIVE YOUR FULL DISTRIBUTION OF THE SETTLEMENT AMOUNT, WHICH INCLUDES PAYMENT FOR YOUR FLSA CLAIMS, YOU MUST COMPLETE, SIGN AND RETURN THIS CLAIM FORM TO THE CLAIMS ADMINISTRATOR BY [DATE 45 DAYS AFTER MAILING] BY MAIL.

RELEASE: By submitting this *Claim Form*, you shall be deemed to fully, forever, irrevocably and unconditionally release, remise, and discharge each and every Released Person from any and all federal wage-related claims relating to your employment at the Restaurant from January 1, 2022 through February 28, 2024, including but not limited to any claims pursuant to the FLSA that you have, had, might have or might have had against any of the *Released Persons* relating to your employment at the Restaurant that in

any way related to any of the facts or claims that were alleged or that could have been alleged in the *Complaint*, asserted in the *Action*, by reason of the negotiations leading to this Settlement, or effectuation of this Settlement, even if presently unknown or un-asserted. (the “FLSA Released Claims”).

You are encouraged to review the entire Settlement Agreement, available at www. [REDACTED], in order to determine how the proposed Settlement Agreement affects you.

I, [REDACTED NAME], certify by signing below that I wish to join the FLSA Collective certified in the Lawsuit listed in the Notice and to participate in the portion of the proposed Settlement relating to claims asserted under the FLSA. I hereby consent to become a party plaintiff in the Lawsuit, and I hereby authorize Class Counsel to file this Claim Form with the Court. I also certify that I agree to be bound by the Release contained in the Settlement Agreement and as reproduced above, and that I agree to be bound by the Claims Administrator’s determination of my hours worked.

Date

Signature

COMPLETE THE BELOW ONLY IF YOU DISPUTE THE CALCULATION IN YOUR NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FRANCHESCA ROLON, on behalf of herself and all others similarly situated,

Plaintiff,

v.

WYOMING MALL HIBACHI RESTAURANT, INC., et al.,

Defendants.

Civil Action No.: 3:24-cv-00232-KM

DECLARATION DISPUTING WORK HOURS

I, _____, declare as follows: (Print Full Name)

1. During the relevant time period, I worked for Defendants as a Tipped Employee at their Restaurant.

2. I have reviewed the Class Notice I received as part of the proposed Settlement of this Litigation. During my review, I have determined that the number of Work Hours set forth in my Class Notice was inaccurate.

3. Specifically, to the best of my recollection, between January 1, 2022 through February 28, 2024 I believe I worked as a Tipped Employee the following hours:

Dates: _____, _____ to _____, _____ # of hours month, day year month, day year

Dates: _____, _____ to _____, _____ # of hours month, day year month, day year

Dates: _____, _____ to _____, _____
month, day year month, day year # of hours

4. In support of my belief, I have have not attached documents to this declaration in support of my claim. Those documents are _____

_____ (describe documents)

5. I understand that by submitting this Declaration, I am authorizing the Claims Administrator to review both my records and Defendants' records to determine the number of hours for which I qualify for payment. I further understand that the determination by the Claims Administrator will be final, and that I will not have another opportunity to dispute the number of hours. By participating in this Settlement, I agree to this dispute resolution procedure and agree that the Claims Administrator's decision is final and binding, and I agree not to contest it.

I declare under penalty of perjury that the foregoing is true and correct. This Declaration was executed on _____ (date), in _____ (city), Pennsylvania.

[sign name]
[print name]

EXHIBIT A

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

YOU ARE NOT BEING SUED.

A FEDERAL COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

CASE NAME AND DOCKET NUMBER: ROLON, V. WYOMING MALL HIBACHI RESTAURANT, INC., ET AL.
DOCKET NO.: 3:24-cv-00232-KM

PLEASE READ THIS NOTICE CAREFULLY, AS THE PROPOSED SETTLEMENT DESCRIBED HEREIN AFFECTS YOUR LEGAL RIGHTS ARISING FROM YOUR EMPLOYMENT WITH THE MIRAKUYA JAPANESE RESTAURANT.

IF YOU WISH TO RECEIVE YOUR FULL PORTION OF THE SETTLEMENT, EXCLUDE YOURSELF FROM THE SETTLEMENT, COMMENT IN FAVOR OF THE SETTLEMENT, OR OBJECT TO THE SETTLEMENT, YOU MUST FOLLOW THE DIRECTIONS PROVIDED IN THIS NOTICE.

1. Why is this notice being sent?

This notice is to inform you of a Class Action Settlement in the case **Rolon, v. Wyoming Mall Hibachi Restaurant, Inc., et al.**, Civil Action No. 3:24-cv-00232-KM, pending in the United States District Court for the Middle District of Pennsylvania (“Lawsuit”). All capitalized terms in this Class Notice are defined in the Settlement Agreement, which is available at [REDACTED]. If terms are insufficiently identified, discussed, or defined in this Notice or if any terms of this Notice conflict with the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

Plaintiff Franchesca Rolon (“Plaintiff”) is the named plaintiff in the Lawsuit filed suit against Wyoming Mall Hibachi Restaurant, Inc., and Chuan B. Lin (who are collectively referred to as “Defendants” or “Mirakuya”). In the Lawsuit, Plaintiff alleges violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.101 *et seq.*, and the Pennsylvania Wage Payment Collection Law (“WPCL”) 43 P.S. § 260.1 *et seq.* Pursuant to the Settlement Agreement, the Plaintiff represents a class of individuals who worked at Defendants’ Restaurant and do not opt-out of the Class. Plaintiff also represents individuals who elect to join the federal claims portion of this case through the process described herein. Importantly, the individuals Plaintiff represents must have worked as Tipped Employees at Mirakuya Japanese Restaurant (collectively, “Defendants”), between January 1, 2022 through February 28, 2024 in one or more of the following positions: bartenders, servers, bussers, house hibachis and sushi chefs (collectively referred to herein as “Tipped Employees”). According to Defendants’ records, you were a Tipped Employee and worked one or more days at Mirakuya Japanese Restaurant during the Class Period. The Plaintiff alleges that Defendants failed to properly pay Tipped Employees by, among other things, failing to satisfy the notice requirements of the tip credit provisions in federal and state law, and requiring Tipped Employees to perform excessive/unrelated side work in violation of applicable federal and state law.

Defendants deny Plaintiff’s allegations in their entirety and assert that at all relevant times, they paid their Tipped Employees properly and that they provided proper notice of the tip credit.

After extensive negotiations, the Parties (Plaintiff and Defendants) have reached a settlement of the Lawsuit (the “Settlement Agreement”). The Court has granted preliminary approval of the Settlement and has scheduled a hearing on _____ at _____ in _____ to determine whether to grant final approval.

IF YOU ARE ONE OF THE INDIVIDUALS DESCRIBED IN THIS NOTICE WHO IS AFFECTED BY THE PROPOSED SETTLEMENT, UNLESS YOU EXCLUDE YOURSELF, YOU WILL GET MONEY FROM THIS SETTLEMENT. HOWEVER, TO RECEIVE ALL THE MONEY ALLOCATED TO YOU UNDER THE SETTLEMENT, YOU MUST COMPLETE AND SUBMIT THE ENCLOSED “CLAIM FORM” (THE GREEN FORM) TO THE CLAIMS ADMINISTRATOR, [REDACTED] (THE “CLAIMS ADMINISTRATOR”), BY [DATE 45 DAYS AFTER MAILING].

2. Who is affected by the proposed Settlement?

The Lawsuit was filed as a class and collective action. In a class action, one or more people called “class representatives” (here, Plaintiff Franchesca Rolon) sue on behalf of people who allegedly have similar claims. This group is called a “class” and the persons included are called “class members.” One court resolves the issues for all of the class members, except for those who exclude themselves from the class. A collective action serves a similar function, except that individuals must affirmatively opt into the collective for their claims to be included in the litigation.

The Plaintiff is serving as the Class Representative for one settlement class and one collective (defined below) of Tipped Employees who worked at Defendants' Mirakuya Japanese Restaurant in Pennsylvania during the applicable Class Period, January 1, 2022 through February 28, 2024. In connection with this Settlement, Plaintiff has asked the Court to certify the following class, pursuant to Fed. R. Civ. P. 23(a) and (b)(3), for settlement purposes only:

All former and current Tipped employees of Defendants who worked in Defendants' Restaurant at any time during the Class Period who has not filed a Request for Exclusion prior to the Bar Date.

Any individual who meets the above definition will automatically become part of the Pennsylvania class if the individual does not timely request exclusion from the class ("PA Class").

Plaintiff has also asked the Court to conditionally certify the following collective, pursuant to 29 U.S.C. § 216(b), for settlement purposes only:

Plaintiff and all former Tipped Employees who affirmatively opt into this Action pursuant to 216(b) of the FLSA by submitting a Claim Form to the Claims Administrator prior to the Bar Date.

Individuals who meet the above definition, which requires submission of the green Claim Form attached to this Notice, will become part of the "FLSA Collective."

The Rule 23 Class and FLSA Collective are collectively referred to herein as the "Classes."

3. What is this case about?

As set forth in the Complaint, Plaintiff alleges that Defendants failed to satisfy the notice requirements of the tip credit provisions in federal and state law and caused deductions from tips in violation of federal and state law (and thus should have paid Tipped Employees the full minimum wage for every hour worked – e.g., \$7.25 per hour in Pennsylvania), and required Tipped Employees to perform excessive/unrelated side work. Defendants have responded to the Lawsuit by denying all of Plaintiff's claims.

The parties in this Litigation disagree as to the probable outcome of the Lawsuit with respect to all issues if it were not settled. While the Plaintiff was prepared to proceed with litigating the case described above, the Plaintiff recognizes that litigating is a risky proposition and that she may not have prevailed on any or all of her claims. Defendants expressly deny any wrongdoing or legal liability and were prepared to proceed with litigating the case if a settlement had not been reached.

This Settlement is the result of good-faith, arms-length negotiations between the Plaintiff and Defendants, through their respective attorneys. Both sides agree that, in light of the risks and expense associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class.

4. What are my options?

You have several options with regard to this Settlement. You can: 1) participate in the Settlement in full by submitting the green Claim Form; 2) do nothing and receive only a portion of the Settlement attributable to your state law claims; 3) participate only in the FLSA portion of the Settlement by submitting the green Claim Form AND submitting the red Request for Exclusion; 4) object to the Settlement; or 5) exclude yourself from the Settlement entirely by submitting the red Request for Exclusion AND not submitting the green Claim Form. Details about each option and how each option will affect your rights under the law are explained below, specifically in Questions 8-13.

5. What are the terms of the proposed Settlement?

Defendants deny all of the allegations made by *Plaintiff*, and deny that they are liable or owe damages to anyone with respect to the alleged facts or causes of action asserted in the *Action*. By entering into the *Settlement Agreement*, *Defendants* in no way admit any violation of law or any liability whatsoever. Under the Settlement Agreement, Defendants will pay a total of One Hundred Twenty-Three Thousand, Seven Hundred Fifty Dollars (\$123,750.00) to settle this Litigation ("Settlement Amount"). The Settlement Amount will be used to cover all payments to Settlement Class members, fees and expenses incurred by the Claims Administrator in administering this Settlement, attorneys' fees and expenses of Class Counsel (as awarded by the Court), and any Service Payment

to Plaintiff (as awarded by the Court).

The Settlement Amount will be divided amongst the members of the Classes (less fees, costs, and expenses). The Claims Administrator will calculate Settlement Payments for members of the Classes. The methodology is briefly described below and is set forth in detail in the Settlement Agreement.

For purposes of this Notice, the Claims Administrator has calculated your “Estimated Class Payment” as follows: First, the Claims Administrator deducted from the Settlement Amount (i) the anticipated amount of attorneys’ fees to be requested (35% of the Settlement Amount), plus estimated expenses of Class Counsel, (ii) the maximum Service Payment sought for the Plaintiffs, and (iii) the estimated fees and expenses of the Claims Administrator. The resulting number is the “Estimated Net Settlement Amount.” For each Tipped Employee, the Claims Administrator then multiplied (i) the total hours worked by that individual and (ii) the difference between the full minimum wage for the state in which the individual worked and the hourly rate actually paid by Defendants to that Tipped Employee. This number is referred to as the “Estimated Individual Damages Amount.”

The Estimated Individual Damages Amount for all Tipped Employees was then added together by the Claims Administrator to determine the “Estimated Total Damages Amount.” Then, the Claims Administrator divided the Estimated Net Settlement Amount by the Estimated Total Damages Amount. The resulting fractional amount was then multiplied by the Estimated Individual Damage Amount to determine that individual’s “Estimated Settlement Payment.” Finally, the Claims Administrator multiplied the Tipped Employee’s Estimated Settlement Payment by 0.5 (i.e., 50%) to obtain the Tipped Employee’s “Estimated Class Payment” (the portion allocable to their state law claims) and by 0.5 (i.e., 50%) to obtain the Tipped Employee’s “Estimated FLSA Collective Payment” (the portion allocable to their federal wage claims).

If the Court grants final approval of the Settlement, your individual Settlement Payments will be calculated using a similar methodology, except that: (a) the Claims Administrator will begin the calculation by deducting from the Settlement only those costs, attorneys’ fees, expenses, and Service Payments awarded by the Court in its Final Approval Order; and (b) the calculation will exclude the hours worked by Tipped Employees who are not members of any of the Classes (i.e., Tipped Employees who submit a request to exclude themselves from the Settlement and do not submit the green Claim Form).

Tipped Employees who **DO** submit the green Claim Form and **DO NOT** exclude themselves from the PA Class by submitting a Request for Exclusion form (the red form) are considered members of both the FLSA Collective and the Rule 23 Class. These individuals will receive 100% of their final pro-rata Settlement Payment in payment for both their state wage claims and federal wage claims.

Tipped Employees who **DO** submit the green Claim Form and **DO** exclude themselves from the PA Class by submitting a Request for Exclusion form (the red form) are considered members of the FLSA Collective only. These individuals will receive 50% of their final pro-rata Settlement Payment in payment for federal wage claims only.

Tipped Employees who **DO NOT** submit the green Claim Form and **DO NOT** exclude themselves from the PA Class by submitting a Request for Exclusion form (the red form) – i.e., do nothing – are considered members of the PA Class only. These individuals will receive 50% of their final pro-rata Settlement Payment in payment for their state wage claims only.

Tipped Employees who **DO NOT** submit the green Claim Form and **DO** exclude themselves from the PA Class by submitting a Request for Exclusion form (the red form) fully exclude themselves from the Settlement and are a member of no Class. These individuals receive no payment and release no claims under the Settlement.

Thus, if a Tipped Employee wants to fully participate in this Settlement, and receive 100% of their Settlement Payment, they must submit their Claim Form before the Bar Date [REDACTED].

The Settlement Payment shall consist of two amounts: (a) 50% shall represent the wage portion of a Tipped Employee’s damages (which is subject to withholding taxes) and (b) 50% shall represent the liquidated damages, penalties, and interest portion of a Tipped Employee’s damages (which is not subject to withholding taxes).

Based on preliminary calculations, the total wage damages suffered by members of the Classes collectively is \$XXXXX. Assuming the Court approves all fees and expenses, a Tipped Employee who submits a Claim Form and does not submit a Request for Exclusion form could expect to receive approximately XX% of their total wages owed during the Class Period. Hence if a Tipped Employee was owed \$1,000.00 in back wages, they would receive \$XXX.XX under this proposed Settlement if they submit a green Claim Form and do not submit a red Request for Exclusion form.

Here is the estimate of the amount you will receive should the Settlement be approved and all Tipped Employees elect to participate in this Settlement:

\$XXXX.XX if you submit the green Claim Form and you DO NOT submit a red Request for Exclusion form.

OR

\$XXXX.XX if you submit the green Claim Form and you ALSO submit a red Request for Exclusion form.

OR

\$XXXX.XX if you do nothing.

OR

\$0.00 if you DO NOT submit the green Claim Form and you DO submit the red Request for Exclusion form.

If Defendants' records indicate that your compensation is subject to additional withholdings (e.g., tax liens, wage garnishments), that will be indicated below. Pursuant to the Settlement Agreement, these withholdings will be deducted from your Settlement Payment. If you believe Defendants' records are in error, you can contact the Claims Administrator to challenge the calculations. Based upon Defendants' records, there is a deduction in the amount of \$XXXX.XX for [redacted].

PLEASE NOTE that to receive a payment for the fifty percent of your Settlement Payment that has been allocated to FLSA claims, you must complete and return the green Claim Form. If you fail to complete and timely return your green Claim Form, your FLSA damages portion of the Settlement Amount will be redistributed to those individuals who timely submit their valid Claim Form.

Likewise, if you elect to submit a red Request for Exclusion form, your portion of your Settlement Payment attributable to state wage claims will be redistributed to those who elect to remain in the PA Class. Pursuant to the Settlement Agreement, individuals who do not timely submit a valid green Claim Form will only receive a check representing their Pennsylvania state wage claims.

Your estimated recovery is based on the number of hours recorded in Defendants' timekeeping system. If you believe the number of hours recorded is in error, please submit a written, signed declaration to the Claims Administrator detailing why you challenge the amount and any and all documents that support your claim. Submitting this declaration will not impact your participation in the Settlement.

As part of the Settlement Amount, and in addition to any amount recoverable as a member of the Settlement Class, Defendants have agreed not to oppose Plaintiff's request for a Court award of up to Two Thousand Five Hundred Dollars (\$2,500.00) in recognition of the risk that Plaintiff took in bringing this Lawsuit and efforts she expended in prosecuting and resolving the Litigation. The actual amount, if any, of the Service Payment to the Plaintiff will be decided by the Court after it considers risks that Plaintiff incurred and the benefits she helped obtain for the Classes.

6. Who represents the Parties?

Plaintiff and Settlement Class Members:

Gerald D. Wells, III
CONNOLLY WELLS & GRAY, LLP
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
Telephone: (610) 822-3700
Facsimile: (610) 822-3800
www.cwglaw.com

Defendants:

Kevin Yam
LITTLER MENDELSON, P.C.
900 Third Avenue
New York, NY 10022
Telephone: (212) 583-9600
Facsimile: (212) 8322719
www.littler.com

7. How will the attorneys for the class be paid?

Class Counsel, as defined in the Settlement Agreement, will request an award of fees that does not exceed thirty-five percent of the Settlement Amount (Forty-Three Thousand, Three Hundred Twelve Dollars and Fifty Cents (\$43,312.50)), plus reimbursement of out-of-pocket expenses. Currently, Class Counsel estimates their expenses to be approximately **XXXX Dollars (\$XXXXX)** as these fees resulted primarily from costs associated with filing fees. Any attorneys' fees and costs awarded in conjunction with the Settlement shall be paid from the Settlement Amount. Any fees and costs awarded by the Court in connection with this Settlement shall include and constitute satisfaction of the entire amount of attorneys' fees and costs awarded by the Court, and shall be distributed by the Claims Administrator after the Court makes a determination regarding the amount of any fees and costs to be awarded.

Settlement Class Counsel's Motion for Attorneys' Fees and Costs will be a public document filed with the Court. Once filed, Settlement Class Counsel's Motion will be available on the following website: **[XXXXXXXXXX]**. The actual amount awarded will be determined by the Court to ensure that the amount of attorneys' fees and costs are reasonable.

8. How do I participate in the Settlement and what happens if I do participate?

To receive your full distribution, which includes payment for your FLSA claims, you must complete, sign and return the green Claim Form to the Claims Administrator, by mailing it postmarked no later than [Date 45 Days after mailing].

By submitting the green Claim Form, you are electing to become a member of the FLSA Collective. If the Court approves the Settlement, all members of the FLSA Collective will receive a distribution amount calculated as described in Section 5. The green Claim Form is enclosed with this Notice and may also be obtained by contacting the Claims Administrator at the address or phone number that appears at the end of this notice. **Please note: you will only receive all of the funds you are entitled to under the Settlement if you timely submit a green Claim Form and elect to become a member of the FLSA Collective. If you do nothing, you will only receive funds attributable to your state wage claims.**

Should you choose to return the green Claim Form and participate in the Settlement, and if the Court grants final approval of the Settlement, you will be deemed by the Court to have fully and irrevocably released and waived any and all federal wage claims you may have against Defendants for known and unknown acts during the period from January 1, 2022 through February 28, 2024. You will be unable to bring any claim against Defendants that is included in the Release of Claims listed on the Claim Form. The full release is contained in the Claim Form.

If you do not submit a valid Claim Form, the FLSA portion of your individual Settlement Payment (representing 50% of your total payment) will not be paid to you. Instead, it will be reapportioned among all FLSA Collective members who did timely submit a valid Claim Form in accordance with the Settlement Agreement.

If you do nothing (i.e., submit neither the green Claim Form or the red Request for Exclusion form), and if the Court grants final approval of the Settlement, you will be deemed by the Court to be a member of the PA Class and you will have fully and irrevocably released and waived any and all applicable state wage claims you may have against Defendants for known and unknown acts during the period from January 1, 2022 through February 28, 2024. You will be unable to bring any state wage claim against Defendants as set forth in the Settlement Agreement. As set forth under Question 5, you will only receive 50% of the funds otherwise attributable to you.

If you are entitled to a distribution of the Settlement, you will receive your Settlement check after final approval and after the Settlement becomes effective and in accordance with the terms of the Settlement Agreement.

Please be advised that if you elect not to endorse and cash your Settlement Check within 180 days of the check date, that portion of your settlement proceeds will be reallocated to a Court appointed *cy pres* recipient(s). A full explanation of how the Settlement Amount will be distributed is contained in the Settlement Agreement.

9. How quickly must I act to participate in the Settlement?

To fully participate in the Lawsuit and receive a distribution from the Settlement Amount, you must

properly complete and timely submit the enclosed green Claim Form to the Claims Administrator. **THE CLAIM FORM MUST BE POSTMARKED OR RECEIVED BY THE CLAIMS ADMINISTRATOR AT THE ADDRESS SET FORTH BELOW ON OR BEFORE [DATE 45 DAYS AFTER MAILING].**

If you do nothing, as more fully described in Question 5 above, you will only receive your portion of the funds attributable to you for your state law claims.

10. What if I choose to object to the Settlement?

PA Class members may choose to object to the fairness, reasonableness, or adequacy of the Settlement by submitting written objections to the Claims Administrator. You can object to the terms of the Settlement before final approval. However, if the Court approves the Settlement, you will still be bound by the terms of the Settlement, including the releases described above.

To object, you must submit a written objection, along with any supporting documents or materials by [DATE 45 DAYS AFTER MAILING] to the Claims Administrator. Any Settlement Class member who does not object in the manner described above shall be deemed to have waived any objections and shall forever be foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees, litigation costs, the Service Payment to the Plaintiff, the claims process, and any and all other aspects of the Settlement.

IF YOU INTEND TO OBJECT TO THE SETTLEMENT, BUT WISH TO RECEIVE YOUR FULL SHARE OF THE SETTLEMENT, YOU MUST STILL TIMELY FILE YOUR CLAIM FORM AS STATED ABOVE. IF THE COURT APPROVES THE SETTLEMENT DESPITE YOUR OR ANY OTHER OBJECTION AND YOU HAVE NOT SUBMITTED A GREEN CLAIM FORM, YOU WILL NOT RECEIVE ANY PROCEEDS ATTRIBUTABLE TO YOUR FLSA CLAIM AND YOU WILL STILL BE BOUND BY ANY APPLICABLE RELEASE OF STATE LAW CLAIMS SET FORTH IN THE SETTLEMENT AGREEMENT.

11. What if I choose to exclude myself from or "opt out" of the Settlement?

You may exclude yourself from the PA Class by submitting the Request for Exclusion (enclosed as the "Red Form" in the Notice Packet). PA Class Members may also exercise this option by sending a letter by mail to the Claims Administrator that states: "I request to be excluded from the settlement in *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 24-cv-00232 (M.D. Pa.). I affirm that I was employed by Defendants as a Tipped Employee on one or more days between January 1, 2022 through February 28, 2024 at one or more of Defendants' Restaurants." Any PA Class Member who wishes to opt-out must also include his or her full name, address, and telephone number. PA Class Members may not exclude themselves by telephone, fax, or email. If a fully completed and properly executed Request for Exclusion is not received by the Claims Administrator from a Settlement Class member and postmarked on or before [DATE - 45 days after mailing], you will be considered part of the PA Class. If you submit a Request for Exclusion but also submit a valid Claim Form, the Claims Administrator will attempt to reach you seeking clarification. Should clarification not be received, the later mailed document will govern and if it cannot be ascertained which document was later mailed, the Claim Form will govern and you will be bound by the terms of the release set forth on Claim Form.

If you timely complete and submit a Request for Exclusion, you will not participate in these proceedings, or receive any money from the Settlement and you will not be subject to the Release of Claims set forth in the Settlement Agreement and Claim Form. **Please note that unless you submit a Request for Exclusion, the release of claims contained in the Settlement Agreement will have the same force and effect upon you as if the Settlement Agreement were executed by you.**

12. Can I exclude myself from the PA Class and participate in the FLSA Collective? Settlement?

Yes, you may exclude yourself from the PA Class through the procedure described in Question 12 above, and still participate in the FLSA Collective by timely submitting the green Claim Form. In that case, you will be entitled to recover only that portion of the Settlement Amount (fifty percent (50%)) attributable to your FLSA claims. Pursuant to the terms of the Settlement Agreement, any funds attributable to your state wage claims will be redistributed amongst Tipped Employees who remained in the Rule 23 Class. Additionally, the statute of limitations on your Pennsylvania state claims will begin to run again.

13. What if I do nothing?

If you do nothing, you will not receive your portion of the distribution attributed to your FLSA claims. Rather, you will only receive a portion of the Settlement Amount attributable to your state wage claims. You will also be bound by the Release of Claims regarding your state claims set forth in the Settlement Agreement. In short, you will be precluded from asserting any state wage claims against Defendants under Pennsylvania state law based on the facts asserted in the Complaint. Also, the statute of limitations regarding your federal wage claim will continue to expire.

All Tipped Employees are strongly encouraged to review this Notice and make a decision as to the extent to which you wish to participate in the Settlement and to return the appropriate form within the allotted time period.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval Hearing at _____ a.m. on _____, 2025, at the United States District Court for the Middle District of Pennsylvania, Max Rosenn U.S. Courthouse, 197 South Main Street, Wilkes-Barre, PA 17701, in Courtroom _____. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 10 above, the Court also will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

Please note that the Court may reschedule the Final Approval Hearing if it deems it necessary. Any such rescheduling will be posted on the settlement website at [XXXXXXXXXXXXXXXXXX](#).

15. Do I have to attend the Final Approval Hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But you are welcome to come, or have your own lawyer appear at your own expense.

16. Who can answer questions regarding the Settlement?

This Notice only summarizes the Settlement terms for the Lawsuit. For more information about the settlement or if you have any questions regarding the settlement, you may contact your class counsel, Connolly Wells & Gray, LLP at:

Gerald D. Wells, III
Connolly Wells & Gray, LLP
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
Phone: (610) 822-3700
Email: gwells@cwglaw.com

XXXXXXXXXXXX

Additional information about this proposed Settlement is available at www.XXXXXXXXXXXXXX.com, a website maintained by the Claims Administrator.

Do not contact the Court or Defendants directly about this matter. They cannot provide you with legal advice or any opinion regarding the Lawsuit or proposed settlement.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FRANCHESCA ROLON, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

WYOMING MALL HIBACHI
RESTAURANT, INC., *et al.*,

Defendants.

Civil Action No.: 3:24-cv-232-KM

JOINT STIPULATION OF SETTLEMENT AND RELEASE AGREEMENT

This Joint Stipulation of Settlement and Release Agreement (the “*Settlement Agreement*”),¹ is entered into by and between Plaintiff Franchesca Rolon (“*Plaintiff*” or “*Rolon*”), on behalf of herself and the *Tipped Employees*, and Defendants Wyoming Mall Hibachi Restaurant, Inc., and Chuan B. Lin (collectively referred to as the “*Defendants*”).

RECITALS

WHEREAS, *Plaintiff* commenced litigation captioned *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 3:24-cv-232-KM in the United States District Court for the Middle District of Pennsylvania (the “*Action*”) alleging various wage and hour claims against the *Defendants* under Pennsylvania state law and the Fair Labor Standards Act (“*FLSA*”);

WHEREAS, the *Defendants* have vigorously contested *Plaintiff’s* alleged claims from the outset, including *Plaintiff’s* assertions that the *Action* may be maintainable as a class and/or collective action;

WHEREAS, the *Parties* have engaged in significant paper discovery practice;

WHEREAS, the *Parties* also engaged in informal settlement discussions amongst themselves, including the production of *Payroll Data* from certain of the *Defendants*;

WHEREAS, the *Defendants* continue to deny all liability with respect to any and all claims alleged in the *Action* and have asserted numerous defenses;

WHEREAS, the *Parties* reached an agreement in principle for a settlement in this *Action*; and

¹ Italicized words are defined herein.

WHEREAS, the *Parties* desire to promptly and fully resolve and settle with finality the *Action* without further litigation.

NOW, THEREFORE, the *Parties*, in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

1. **BACKGROUND**

Plaintiff worked as a bartender at a restaurant operated by the *Defendants* doing business as Mirakuya Japanese Restaurant in Wilkes-Barre, Pennsylvania. Ms. Rolon received part of her compensation in tips, and the *Defendants* utilized a “tip credit” to satisfy its federal and state minimum wage obligations in paying *Plaintiff* and other *Tipped Employees*. Ms. Rolon claims the *Defendants*: (i) failed to satisfy the notice requirements of the tip credit provisions in federal and state law; (ii) failed to ensure *Plaintiff* and other *Tipped Employees* earned the mandated minimum wage when taking the tip credit; and (iii) paid *Plaintiff* and other *Tipped Employees* the tipped wage even when they were performing non-tipped duties. *Defendants* vigorously deny each allegation and maintain that their restaurant’s employees, including Ms. Rolon and all *Tipped Employees*, were properly paid at all times.

On February 7, 2024, on the basis of those alleged facts, *Plaintiff* sued the *Defendants* in the United States District Court for the Middle District of Pennsylvania, Case No. 3:24-cv-232-KM. On her own behalf, and on behalf of a putative class and putative collective, Ms. Rolon asserted claims under the Fair Labor Standards Act (“FLSA”), the Pennsylvania Minimum Wage Act (“PMWA”), and Pennsylvania Wage Payment Collection Law (“WPCL”). *Plaintiff* sought recovery of alleged unpaid wages, liquidated damages, and *Plaintiff*’s attorneys’ fees and costs. The *Action* was assigned to the Honorable Karoline Mehalchick.

Thereafter, on May 20, 2024, the *Defendants* filed their Answer and Affirmative Defenses (“*Answer*”). On July 2, 2024, the *Court* held a pretrial conference in this matter. That same day, the *Court* entered a scheduling order. Thereafter, the *Parties* engaged in written discovery. On August 28, 2024, the *Court* granted *Plaintiff*’s motion to stay all deadlines until the *Parties* could address certain discovery issues with the *Court*. During this time, the *Parties* engaged in significant, informal settlement discussions. These discussions included the production of certain, sensitive financial information from some of the *Defendants*. Ultimately, the *Parties* agreed to settle on the terms detailed herein.

Based upon their independent analysis, and recognizing the risks of continued litigation, counsel for *Plaintiff* believes that the settlement with *Defendants* for the consideration of and on the terms set forth in this *Settlement Agreement* is fair, reasonable, and is in the best interest of *Plaintiff* and *Settlement Class* members, in light of all known facts and circumstances, including the risk of delay and defenses asserted by *Defendants*. Although *Defendants* deny liability, they have agreed to the settlement to avoid the cost and burden of continued litigation and because they too believe it is in the *Parties*’ best interests. For those reasons, and because an effective release is

contingent on *Court* approval, the *Parties* submit their *Settlement Agreement* to this *Court* for its review.

2. **DEFINITIONS**

- 2.1 ***Action.*** The legal action captioned *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 3:24-cv-232-KM, in the United States District Court for the Middle District of Pennsylvania.
- 2.2 ***Bar Date.*** The date by which a *Tipped Employee* must submit any of the following to the *Claims Administrator*: (i) an objection; (ii) a *Request for Exclusion* from the *PA Class*; (iii) a *Claim Form*; and/or (iv) a declaration contesting the validity of the *Claims Administrator's* calculations regarding that individual *Settlement Class* member's *Estimated Settlement Payment*. The *Parties* agree that the *Bar Date* shall be forty-five (45) days after the mailing of the *Notice Packet*.
- 2.3 ***CFAA.*** The Class Action Fairness Act.
- 2.4 ***Claim Form.*** The form substantially in the form attached hereto as Exhibit B that shall be mailed with the *Notice Packet* for *Tipped Employees*. Where appropriate, the *Claim Form* shall include the form or language to substitute for Department of Treasury Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification. The *Claims Administrator* may elect to establish a secure portal by which *Tipped Employees* can complete and submit their *Claim Form*.
- 2.5 ***Claims Administrator.*** A.B. Data Group.
- 2.6 ***Class Counsel.*** Connolly Wells & Gray, LLP.
- 2.7 ***Class Notice.*** The notice substantially in the form of Exhibit A to be directed to *Tipped Employees*. The purpose of the *Class Notice* is to inform *Tipped Employees* about the resolution of the *Action* and the material terms of this *Settlement Agreement*.
- 2.8 ***Class Period.*** January 1, 2022 through February 28, 2024. This period shall cover only the *Work Hours* set forth in the *Payroll Data*.
- 2.9 ***Class Payment.*** The portion of an individual *Settlement Payment* that a *PA Class* member will receive pursuant to the *Settlement Agreement* for the release of Pennsylvania state law claims.
- 2.10 ***Complaint.*** The complaint filed in this *Action* on or around February 7, 2024.
- 2.11 ***Court.*** The United States District Court for the Middle District of Pennsylvania.
- 2.12 ***Cy Pres Distribution.*** Any and all funds that, pursuant to the terms of this *Settlement*, require distribution to a *Cy Pres Recipient* pursuant to Section 4.13 of this *Settlement*

Agreement.

- 2.13 ***Defendants.*** Wyoming Mall Hibachi Restaurant, Inc., and Chuan B. Lin.
- 2.14 ***Defendants' Counsel.*** Littler Mendelson, P.C.
- 2.15 ***Effective Date.*** The first day after the *Settlement* becomes *Final*.
- 2.16 ***Estimated FLSA Collective Payment.*** “Estimated FLSA Collective Payment” will have the meaning set forth in Section 4.7.
- 2.17 ***Estimated Class Payment.*** “Estimated Class Payment” will have the meaning set forth in Section 4.7.
- 2.18 ***Estimated Settlement Payment.*** “Estimated Settlement Payment” will have the meaning set forth in Section 4.7.
- 2.19 ***Expiration Period.*** 180 days after the mailing of the *Settlement Payment* to the *Settlement Class* members.
- 2.20 ***Final.*** With respect to any judicial ruling or order, an order that is final for purposes of 28 U.S.C. § 1291, and (a) for which the time has expired to file an appeal, motion for reconsideration or clarification, motion for re-argument, motion for rehearing, petition for a writ of certiorari or other writ (“*Review Proceeding*”) with respect to such judicial ruling or order with no such *Review Proceeding* having been filed; or (b) if a *Review Proceeding* has been filed with respect to such judicial ruling or order, (i) the judicial ruling or order has been affirmed without material modification and with no further right of review, or (ii) such *Review Proceeding* has been denied or dismissed with no further right of review.
- 2.21 ***Final Approval Hearing.*** The hearing scheduled by the *Court*, if any, to decide whether to approve the *Settlement* as fair, reasonable, and adequate pursuant to Fed. R. Civ. P. 23. Such a hearing will only constitute a *Final Approval Hearing* if it is scheduled at least 60 days after entry of the *Preliminary Approval Order*, so as to provide adequate time for *Class Notice* to be disseminated.
- 2.22 ***Final Approval Order.*** The document substantially in the form attached hereto as Exhibit E, which will be submitted to the *Court* by the *Parties* to seek: (1) approval of this *Settlement Agreement* on the terms provided herein (or as the same may be modified by subsequent mutual agreement of the *Parties* subject to approval of the *Court*), adjudging such terms to be adequate, fair and reasonable, and in the best interests of *Plaintiff* and *Settlement Class* members; (2) certification of the *Settlement Class* for settlement purposes only; (3) approval of *Class Counsel's* application for an award of their fees, costs and expenses; (4) approval of *Class Counsel's* application for a *Service Payment* to *Plaintiff*; and (5) dismissal of the *Action* with prejudice.
- 2.23 ***Final Effective Date.*** The date on which the *Settlement* becomes *Final* and all *Settlement*

Conditions have either been satisfied or waived in accordance with this *Settlement Agreement*.

- 2.24** *FLSA Collective.* Plaintiff and all *Tipped Employees* who affirmatively opt-into this *Action* pursuant to Section 216(b) of the FLSA by submitting a *Claim Form* to the *Claims Administrator* prior to the *Bar Date*.
- 2.25** *FLSA Collective Payment.* The portion of an individual *Settlement Payment* that an *FLSA Collective* member will receive pursuant to the *Settlement Agreement* for the release of FLSA claims.
- 2.26** *Litigation.* The legal action captioned *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 3:24-cv-232-KM, in the United States District Court for the Middle District of Pennsylvania. The terms *Litigation* and *Action* shall be used interchangeably herein.
- 2.27** *Notice Packet.* The (i) *Class Notice* mailed to *Tipped Employees* in accordance with this *Settlement Agreement*; (ii) *Estimated Settlement Payment* for the individual *Tipped Employee* to whom the *Class Notice* was mailed; and (iii) the required deductions, if any, set forth within *Defendants'* payroll records (e.g., garnishments, tax liens, child support). The *Notice Packet* sent via U.S. mail shall also include a *Claim Form* and a *Request for Exclusion* form.
- 2.28** *Notice Period.* The period of time from the date the *Claims Administrator* mails the *Notice Packet* through the *Bar Date*.
- 2.29** *Owners.* The individual owners of the *Restaurant* identified by *Defendants* who were not named in the *Complaint*. These individuals are Shao Fang Chen, Geng Da Lin, and Gui Jing Chen. As set forth herein, the *Owners* shall have the same release as provided to the *Defendants*.
- 2.30** *PA Class.* All former and current *Tipped Employees* of *Defendants* who worked in *Defendants'* *Restaurant* at any time during the *Class Period* who has not filed a *Request for Exclusion* prior to the *Bar Date*. Such a class shall be certified for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3).
- 2.31** *Parties.* Plaintiff and *Defendants* and, in the singular, "Parties" refers to any of them, as the context makes apparent.
- 2.32** *Payroll Data.* The pay records set forth in the excel spreadsheets provided by previous defense counsel and sent to *Class Counsel* on or about June 25, 2024 via email. For purposes of this *Settlement Agreement*, only the hours worked at a subminimum wage included in these spreadsheets shall be considered *Payroll Data*. According to the data for *Tipped Employees* included in these spreadsheets, the hours worked at a subminimum wage total 50,466.48.

- 2.33 **Plaintiff.** The named plaintiff in this *Action*, Franchesca Rolon.
- 2.34 **Plaintiff's Counsel.** Connolly Wells & Gray, LLP, and Fellerman & Ciarimboli Law P.C.
- 2.35 **Preliminary Approval Order.** The document substantially in the form attached hereto as Exhibit D, which will be submitted to the *Court* by the *Parties* to seek (a) preliminary approval of this *Settlement Agreement*; (b) dissemination of *Class Notice*; (c) approval of the proposed form of *Class Notice*; (d) certification a Fed. R. Civ. P. 23(b)(3) settlement only class; (e) appointment of Franchesca Rolon as class representative and the law firm of Connolly Wells & Gray, LLP as *Class Counsel*; and (f) a finding that the proposed manner of serving the *Class Notice* to the members of the *Tipped Employees* is the best notice practicable under the circumstances.
- 2.36 **Released Persons.** *Defendants*, the *Owners*, and any of their affiliates, parents, subsidiaries, business units, joint venturers, and related companies, and their past or present officers, directors, shareholders, members, managers, contractors, agents, representatives, or attorneys.
- 2.37 **Request for Exclusion.** The document substantially in the form attached hereto as Exhibit C wherein a *Tipped Employee* who worked for *Defendants* during the *Class Period* and would otherwise be a member of the *PA Class* requests to be excluded from the terms of this *Settlement*.
- 2.38 **Restaurant.** The restaurant establishment operated by *Defendants* and doing business as “Mirakuya Japanese Restaurant.”
- 2.39 **Review Proceeding.** “Review Proceeding” will have the meaning set forth in Section 2.20.
- 2.40 **Service Payment.** The amount to be approved by the *Court* for payment to *Plaintiff* Franchesca Rolon in recognition for her efforts in assisting in the prosecution of this *Action* on behalf of the *Settlement Class*. The *Parties* stipulate and agree that *Plaintiff* shall not seek a *Service Payment* in excess of \$2,500.00 in this *Action*.
- 2.41 **Settlement.** The resolution of the *Action* pursuant to the agreement of the *Parties* on the terms and conditions as set forth in this *Settlement Agreement*.
- 2.42 **Settlement Amount.** The \$123,750.00 payment that *Defendants* will pay to settle the *Action* as described in this *Settlement Agreement*, inclusive of *Plaintiff's Counsel's* fees and costs, the *Service Payment*, and the *Claims Administrator's* fees and expenses. The *Settlement Amount* may remain in *Defendants' general funds* until required to be provided to the *Claims Administrator* for distribution pursuant to Section 4. Except as set forth in this *Settlement Agreement*, *Defendants* shall not be called upon or required to contribute additional monies above the *Settlement Amount* under any circumstances whatsoever. Under no circumstances whatsoever shall any portion of the *Settlement Amount* revert to *Defendants* except as set forth in Section 7.3 (B)(2).

- 2.43 **Settlement Agreement.** This *Settlement Agreement*, including any modifications or amendments adopted pursuant to Section 8.14.
- 2.44 **Settlement Check.** Checks issued to *Settlement Class* members in the amount of their individual *Settlement Payment*. Each *Settlement Check* shall contain release language on its back in conformity with Section 4.12, or in an attached letter sent with the *Settlement Payment*, whichever the *Claims Administrator* determines is easier.
- 2.45 **Settlement Class.** All members of the *PA Class* and the *FLSA Collective*.
- 2.46 **Settlement Conditions.** Each of the conditions and obligations set forth in Section 3 of this *Settlement Agreement* that must either be satisfied or waived in writing by the Party entitled to the benefit of the condition or obligation.
- 2.47 **Settlement Payment.** The payment an individual *Settlement Class* member will receive pursuant to the *Settlement Agreement*.
- 2.48 **Tipped Employee.** Any individual employed by *Defendants* during the *Class Period* at the *Restaurant* where *Defendants* attempted to claim a “tip credit” for that employee pursuant to Section 203(m) of the *FLSA*. Such employees include bartenders, servers, bussers, house hibachis and sushi chefs.
- 2.49 **Work Hour.** Any hour worked by a *Tipped Employee* for *Defendants* during the *Class Period* at the *Restaurant* for which *Defendants* claimed a tip credit pursuant to Section 203(m) of the *FLSA*. The total *Work Hours* for the *Settlement Class* during the *Class Period* is 50,466.48 according to *Defendants’* payroll records set forth in the *Payroll Data*.

3. **SETTLEMENT CONDITIONS**

The Parties stipulate and agree that each of the *Settlement Conditions* set forth in this Section is a material term. Except as otherwise provided in this *Settlement Agreement*, the *Parties* will use reasonable efforts to cause each of the following *Settlement Conditions* to occur and will support approval of the *Settlement* before the *Court*.

- 3.1 **Preliminary Approval of Settlement Agreement by the Court.** On or before February 10, 2025, the *Parties* will submit this *Settlement Agreement* (including all exhibits) to the *Court* for preliminary approval and will jointly request entry of a *Preliminary Approval Order* substantially in the form attached hereto as Exhibit D.
- 3.2 **Certification of Settlement Class.** The *Court* shall grant certification solely and exclusively for settlement purposes of the *Settlement Class* consisting of the (i) *FLSA Collective* and (ii) *PA Class*. For settlement purposes only, and to effectuate this *Settlement Agreement*, *Defendants* will not object to certification as set forth herein. Should this *Settlement Agreement* not become final, such stipulation to conditional certification shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not conditional certification would

be appropriate in a non-settlement context.

- 3.3 Certification by the Claims Administrator of the Total Hours for the Tipped Employees.** Pursuant to Section 4.6, the *Claims Administrator* shall either (i) certify that no adjustment to the *Settlement Amount* is necessary or (ii) advise *Plaintiff's Counsel* and *Defendants' Counsel* that there is a deviation in the *Total Hours*. Such a certification shall occur at least ten (10) days before the *Final Approval Hearing*. Said certification can be accomplished through notifying *Class Counsel* and *Defendants' Counsel*.
- 3.4 Entry of Final Approval Order by the Court.** The *Parties* will jointly request that the *Court* schedule a *Final Approval Hearing* at least 60 calendar days after entry of the *Preliminary Approval Order*. At the *Final Approval Hearing*, the *Parties* will jointly move for entry of a *Final Approval Order*, substantially in the form attached hereto as Exhibit E.
- 3.5 Defendants Paying the Settlement Amount.** *Defendants* will transfer the *Settlement Amount* to the *Claims Administrator* within ten (10) business days of the *Settlement* becoming *Final* provided the *Settlement* becomes *Final*.
- 3.6 Final Approval Order Becoming Final.** If the *Court* denies approval of any material term of the *Settlement*, whether initially, or if a *Review Proceeding* has been instituted, then after the conclusion of any *Review Proceeding*, any *Party* may terminate the *Settlement Agreement* under Section 7. If the *Court* does not enter the *Final Approval Order* or if the *Final Approval Order* does not become *Final* then any *Party* may terminate this *Settlement Agreement* pursuant to Section 7.

4. TERMS OF SETTLEMENT

- 4.1 Settlement Amount.** *Defendant* will pay the *Settlement Amount*, which includes *Plaintiff's Counsel's* fees and costs as awarded by the *Court*, any *Service Payment* as awarded by the *Court*, and the *Claims Administrator's* fees and expenses under the *Settlement Agreement*. Also being paid from the *Settlement Amount* will be all *PA Class* members' state-law claims and all *FLSA Collective* members' *FLSA* claims. In return for the *Settlement Amount*, *Defendants* will obtain (among other things) the releases described in Section 5.
- 4.2 Class Certification.** In connection with preliminary and final approval of the proposed *Settlement*, *Plaintiff* will, through *Class Counsel*, and solely and exclusively for settlement purposes only, seek certification of the *PA Class* pursuant to Fed. R. Civ. P. 23(b)(3). *Plaintiff* will also seek certification of the *FLSA Collective* pursuant to 29 U.S.C. § 216(b).

Preliminary Approval. The *Parties* will use reasonable efforts to enable the *Plaintiff* to file a motion ("Preliminary Approval Motion") with the *Court* for the issuance of a *Preliminary Approval Order*, substantially in the form attached hereto as Exhibit D, which, among other things, will: (a) preliminarily approve this *Settlement Agreement*; (b) direct the time and manner of the *Notice Packet* to be served upon the *Tipped Employees*; (c) find that the proposed form of *Class Notice* fairly and adequately (i) describes the terms and effect of this *Settlement Agreement*, (ii) provides notice to the

Tipped Employees of the time and place of the *Final Approval Hearing* and (iii) describes how the recipients of the *Class Notice* may object to the *Settlement*; and (d) find that the proposed manner of serving the *Class Notice* to the *Tipped Employees* is the best notice practicable under the circumstances.

- 4.3 Cooperation.** The *Parties* will, in good faith, take reasonable steps to (a) secure expeditious entry of the *Preliminary Approval Order* by the *Court*; (b) seek a date for the *Final Approval Hearing* at least 60 calendar days after entry of the *Preliminary Approval Order*; and (c) and seek entry of the *Final Approval Order*.
- 4.4 Retention of Claims Administrator.** The *Claims Administrator* will be responsible for the claims-administration process and distribution of the *Class Notice* and *Settlement Payments* as provided herein. *Defendants* will cooperate with the *Claims Administrator* and assist it in any reasonable way possible in administering this *Settlement Agreement*. *Claims Administrator* fees are to be paid out of the *Settlement Amount*. The *Claims Administrator* will provide *Class Counsel* and *Defense Counsel* with a final bill of its fees no later than ten (10) days before the *Final Approval Hearing*.
- 4.5 Class Information.** Within twenty (20) calendar days after the *Court* enters a *Preliminary Approval Order*, *Defendants* will provide the *Claims Administrator* with a list, in electronic form, containing the following information for *Plaintiff* and for each *Tipped Employee*: name, last known address, last known telephone number(s), last known email address(es), Social Security Number, hourly rate of pay paid by *Defendants* (the “cash wage” paid pursuant to Section 203(m)), number of hours recorded in *Defendants’* timekeeping system, the dates employed by *Defendants* at any time during the *Class Period* so as to confirm the *Payroll Data*. At the same time, *Defendants* will also provide *Class Counsel* with the same information it provides to the *Claims Administrator*, with such information being produced in the same format. The *Claims Administrator* shall have a fiduciary duty to maintain, safeguard, maintain private and confidential, and prevent the dissemination of any and all *Payroll Data*. The *Claims Administrator* will not use the information produced pursuant to this section for any purpose other than to administer the *Settlement*. Similarly, *Class Counsel* agrees that the class information as described in this paragraph shall not be used in the future in any way (including the prosecution of claims) against *Defendants*. The *Parties* stipulate and agree that they will each cooperate and use their best efforts to provide the *Claims Administrator* any information the *Claims Administrator* requests in order to facilitate its duties and obligations set forth in this *Settlement Agreement*.
- (A) **Total Hours.** Data produced by *Defendants* reflects that during the *Class Period*, *Defendants* claimed a “tip credit” for 50,466.48 hours worked by *Tipped Employees*. Should during the course of administering this *Settlement*, it be determined that the amount of actual hours *Defendants* claimed a “tip credit” for during the *Class Period* deviates by four percent (4%) or more from the *Payroll Data*, *Plaintiff* may elect, at her sole discretion, to terminate this *Settlement Agreement* in accordance with Section 7 if *Defendants* do not agree in writing to add to the *Settlement Amount* on a dollar-for-dollar basis an amount to bring the

deviation below the four percent (4%) margin within seven days of being so notified by the *Claims Administrator*.

4.6 Calculation of *Settlement Payments for Plaintiff and Settlement Class Members*.

- (A) ***Estimated Settlement Payment.*** The *Notice Packet* will contain an “*Estimated Class Payment*” and an “*Estimated FLSA Collective Payment*” for the individual *Tipped Employee* to whom it was mailed. The *Estimated Class Payment* and the *Estimated FLSA Collective Payment* together equal the individual’s *Estimated Settlement Payment*. The *Claims Administrator* will calculate these estimated payments as follows:
- (1) The *Claims Administrator* will deduct from the *Settlement Amount* (i) the anticipated amount of attorneys’ fees and costs to be requested (35% of the *Settlement Amount*), (ii) the maximum *Service Payment* sought for the Plaintiff, and (iii) the estimated fees and expenses of the *Claims Administrator*. The resulting number will be referred to as the “*Estimated Net Settlement Amount*.”
 - (2) For each *Tipped Employee*, the *Claims Administrator* will total the amount of tip credit taken by *Defendants* for all hours worked as a *Tipped Employee* during the *Class Period* as reflected in the *Payroll Data*. For example, if an individual was paid \$3.00 per hour, resulting in *Defendants* taking a tip credit of \$4.25 per hour, and that employee worked 100 hours during the *Class Period*, that individual *Tipped Employee* would be owed \$425.00. This number will be referred to as the “*Estimated Individual Damage Amount*.”
 - (3) The *Estimated Individual Damage Amounts* for all *Tipped Employees* will then be added together by the *Claims Administrator* to determine the “*Estimated Total Damages Amount*.”
 - (4) The *Estimated Net Settlement Amount* will then be divided by the *Estimated Total Damages Amount*.
 - (5) The *Claims Administrator* will then multiply the resulting fractional amount by each *Estimated Individual Damage Amount* to determine that *Tipped Employee*’s “*Estimated Settlement Payment*.”
 - (6) 50% of each *Tipped Employee*’s *Estimated Settlement Payment* will represent the *Tipped Employee*’s *Estimated Class Payment*, and the remaining 50% will represent the *Tipped Employee*’s *Estimated FLSA Collective Payment*.
 - (7) The *Class Notice* shall inform *Tipped Employees* that they do not need to take any action in order to automatically receive 50% of their *Estimated*

Settlement Payment, provided they remain members of the *PA Class*, and that such payment shall constitute payment for the release of their Pennsylvania state law claims.

- (8) Thus, for a *Tipped Employee* to receive 100% of their *Estimated Settlement Payment* (less applicable deductions set forth in this *Settlement Agreement*), an individual must opt-into the *FLSA Collective* and not opt-out of the *PA Class*. Based on the individual's submission (or lack thereof) by the *Bar Date*, it shall be deemed the *Tipped Employee's* sole discretion whether they elect to receive only their *FLSA Collective Payment*, their *Class Payment*, or both.
 - (9) Should an individual not wish to fully participate in the *Settlement*, they may elect to receive only their *Class Payment* or *FLSA Collective Payment*. In such circumstances, the payment not claimed will be redistributed to the individuals who are participating in that tranche with the unclaimed funds redistributed to individuals in the applicable tranche on a proportional basis. For example, if an individual elects not to receive their *FLSA Collective Payment* by not submitting a *Claim Form*, the monies allocated to their *FLSA Collective Payment* will be redistributed to members of the *FLSA Collective* on a proportional basis.
 - (10) Upon receipt of the *Notice Packet*, any *Tipped Employee* who wishes to challenge either (i) the calculation of his or her *Estimated Settlement Payment* or (ii) the required deductions set forth within *Defendants'* payroll records (e.g., garnishments, tax liens, child support) must submit a written, signed declaration to the *Claims Administrator* for receipt by the *Claims Administrator* on or before the *Bar Date*, along with documentation (e.g., pay stubs or other records) to support the challenge. The *Claims Administrator* will resolve the challenge and make a final and binding determination without hearing or right of appeal.
- (B) ***Settlement Payment.*** All *Settlement Class Members* will receive money in connection with this *Settlement*. Once the *Settlement* becomes *Final*, the *Claims Administrator* will calculate *Settlement Payments* as follows:
- (1) The *Claims Administrator* will deduct from the *Settlement Amount* the following amounts as awarded or permitted by the *Court*: (i) *Class Counsel's* attorneys' fees and expenses, (ii) the *Service Payment*, if any, to the *Plaintiff*, and (iii) the fees and expenses of the *Claims Administrator*. The resulting number will be referred to as the "*Net Settlement Amount.*"
 - (2) For each *Settlement Class Member*, the *Claims Administrator* will total the amount of tip credit taken by *Defendants* for all hours worked as a *Tipped Employee* during the *Class Period*. The *Claims Administrator* will then add the total amounts owed for all hours worked for each *Settlement Class*

Member as a Tipped Employee. This number will be referred to as the “*Individual Damage Amount.*”

- (3) The *Individual Damage Amount* for all *Settlement Class Members* will then be added together by the *Claims Administrator* to determine the “*Settlement Class Members’ Total Damages Amount.*”
 - (4) The *Net Settlement Amount* will be divided by the *Settlement Class Members’ Total Damages Amount.*
 - (5) The resulting fractional amount will then be multiplied by an *Individual Damage Amount* to determine that *Settlement Class* member’s “*Gross Settlement Payment.*”
 - (6) For *Settlement Class Members* who are *PA Class* **and** *FLSA Collective* members, the individual’s *Settlement Payment* equals their *Gross Settlement Payment*. For those *PA Class* members who are **not** also *FLSA Collective* members, the individual’s *Settlement Payment* is equal to 50% of their *Gross Settlement Payment* (“*Class Payment*”). For those *FLSA Collective* members who are **not** also *PA Class* members, the individual’s *Settlement Payment* is equal to 50% of their *Gross Settlement Payment*.
 - (7) In such circumstances where individuals elected not to receive 100% of their *Gross Settlement Payment*, the payment not claimed will be redistributed to the individuals who are participating in that tranche with the unclaimed funds redistributed to individuals in the applicable tranche on a proportional basis. For example, if an individual elects not to receive their *FLSA Collective Payment* by not submitting a *Claim Form*, the monies allocated to their *FLSA Collective Payment* will be redistributed to members of the *FLSA Collective* on a proportional basis.
 - (8) The *Claims Administrator* shall use its best efforts to redistribute unclaimed funds on a proportionate basis outlined above. However, to the extent necessary, it is permitted to use estimates and round amounts to the nearest penny provided such efforts are done for the entire tranche at issue.
 - (9) To avoid a windfall to any individual *Settlement Class* member, no individual’s *Settlement Class* member’s individual *Settlement Payment* will be higher than ten times that individual’s *Estimated Settlement Payment*. Should any *Settlement Class* member’s *Settlement Payment* be higher than ten times his or her *Estimated Settlement Payment*, such amount will be reduced accordingly and with such reduction subject redistribution to the other *Settlement Class* members. If all Claimants are subject to the above cap, then any reduction shall be subject to a Court-approved *Cy Pres Distribution*.
- (C) For purposes of performing the calculations set forth above, the *Claims*

Administrator will rely on the hours recorded in *Defendants' Payroll Data* when determining the total *Work Hours* for *Settlement Class* members. Further, the *Claims Administrator* will also rely on tip credit claimed, as recorded in *Defendants' Payroll Data*, when performing the calculations set forth above. If an individual contests the amount of hours worked in the *Payroll Data*, the *Claims Administrator* shall use the hours worked as reflected in *Defendants'* timekeeping system or as demonstrated by that individual, should the hours in the *Payroll Data* be contested.

- (D) *Plaintiff, Plaintiff's Counsel, Defendants, and Defendants' Counsel* will have no responsibility for, or liability arising from, the *Claims Administrator's* calculations of the distribution of the *Settlement Amount* including, without limitation, the calculation of an individual *Settlement Class* member's *Settlement Payment*.
- (E) *Plaintiff* is a member of the *PA Class* and the *FLSA Collective* by operation of this *Settlement Agreement*. *Plaintiff's Settlement Payment* will be calculated in accordance with the formula set forth above. *Plaintiff* need not take any further action to receive her payments as member of the *PA Class* and *FLSA Collective*.
- (F) Ten days before the *Final Approval Hearing*, the *Claims Administrator* will certify jointly to *Class Counsel* and *Defendants' Counsel* a list of all *Settlement Class* members, indicating for each member of the *Settlement Class* the total *Settlement Payment* due to that individual pursuant to this *Settlement Agreement*. The *Claims Administrator* will also indicate whether any challenges to a *Settlement Class* member's *Settlement Payment* have been received and, if so, the status of the challenge(s).

4.7 Class Notice.

- (A) The *Claims Administrator* will disseminate the *Class Notice* by the following means: mail and email, to the extent *Defendants* possess email addresses for *Tipped Employees*. The *Claims Administrator* will mail the *Notice Packet* via First Class Mail to each *Tipped Employee* within fourteen (14) calendar days after the *Class Administrator* receives the class list and the data required to perform the preliminary calculations. The *Claims Administrator* will (among other things) provide estimated settlement payment amounts in the *Class Notice*, and, if the *Claims Administrator* so determines, establish a secure portal by which *Tipped Employees* can complete and submit their *Claim Form* (to facilitate return of *Claim Forms*).
- (B) Before mailing, the *Claims Administrator* will attempt to confirm the accuracy of the addresses of each *Tipped Employee* through the United States Post Office's National Change of Address ("NCOA") database. If a *Notice Packet* is returned as undeliverable, the *Claims Administrator* will perform one skip trace and resend by First Class United States Mail the *Court-approved Class Notice* once only to

those *Tipped Employees* for whom it obtains more recent addresses.

- (C) Within three days after the *Claims Administrator* effectuates mailing of the *Notice Packet*, the *Claims Administrator* will also email a copy of the *Class Notice* to any *Tipped Employee* for which *Defendants* provided that *Tipped Employee's* last known email address. The email shall also include a statement that the full *Notice Packet* has been mailed to the individual's last known address and, if the *Claims Administrator* so determines, a link to the portal to complete and submit their *Claim Form*.
- (D) The *Claims Administrator* shall, where appropriate, send a reminder postcard or reminder email fifteen (15) days prior to the *Bar Date* to any individual who has not submitted a *Claim Form* advising them of the forthcoming *Bar Date*.
- (E) The *Claims Administrator* will mail a *Court*-approved *Class Notice* to any *Tipped Employee* who contacts the *Claims Administrator* during the time period between the initial mailing of the *Class Notice* and the *Bar Date* and requests that a *Class Notice* be re-mailed. During the *Notice Period*, no other communications will be sent by either *Party* to *Tipped Employees*. *Class Counsel* may nevertheless communicate with *Plaintiff* and respond to inquiries they receive from *Tipped Employees* during the *Notice Period*. However, *Class Counsel* shall not initiate contact with *Tipped Employees*, except as required to carry out the terms of the *Settlement* or to fulfill their ethical obligations. *Defendants* may nevertheless communicate with their current employees in response to inquiries regarding any matter, excluding the *Action*, the *Settlement*, or this *Settlement Agreement*. For any inquiry regarding the *Action*, the *Settlement*, and/or the *Settlement Agreement*, *Defendants* shall advise that *Tipped Employee* to contact *Class Counsel* as directed in the *Class Notice*.
- (F) Upon mailing of the *Notice Packet*, the *Claims Administrator* shall establish a settlement website (or a link on their existing website), with password protection necessary to access the link, to assist in providing *Tipped Employees* with information regarding the *Settlement*. Such website may include (i) the *Complaint*; (ii) the *Settlement Agreement*; (iii) a copy of the *Class Notice*; (iv) any orders entered by the *Court* regarding the *Settlement*; and (v) a list of frequently asked questions and their corresponding answers that is mutually agreed upon by the *Parties*. Such website will be taken down within ten (10) days of the *Settlement* becoming *Final*.
- (G) The *Claims Administrator* will provide to *Defendants' Counsel* and *Class Counsel* at least once every three weeks, a report concerning any objections raised by any *Tipped Employees*, the number of *Claim Forms* submitted to date, and the number of *Request for Exclusions* submitted to date. Further, fourteen (14) days before the *Final Approval Hearing*, the *Claims Administrator* will provide *Defendants' Counsel* and *Class Counsel* with a cumulative report detailing any objections received from *Tipped Employees*.

4.8 Objections. Only *Settlement Class* members may object to the Settlement. To object to the *Settlement*, the individual must send a written objection to the *Claims Administrator* no later than the *Bar Date*. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. Members of the *Settlement Class* who wish to object and be represented by counsel will do so at their own expense. No *Settlement Class* member will have any claim to any part of the *Settlement Amount* based, in whole or in part, on their retention of outside counsel. Should the *Claims Administrator* receive any objection, it will promptly notify *Defendants' Counsel* and *Class Counsel* and will provide each with the contact information for the objecting *Settlement Class* member.

4.9 Opt-Out/Request for Exclusion.

- (A) For a *Tipped Employee* to exclude himself or herself from the Settlement (“opting-out”), he or she must write and submit a *Request for Exclusion*. The *Parties* stipulate and agree that the following shall also constitute a valid *Request for Exclusion*: If a *PA Class* member writes the *Claims Administrator* a letter that states: “I request to be excluded from the settlement in *Rolon v. Wyoming Mall Hibachi Restaurant, Inc., et al.*, Civil Action No. 3:24-cv-232-KM (M.D. Pa.). I affirm that I was employed by Defendants as a Tipped Employee on one or more days between January 1, 2022 and February 28, 2024 at Defendants’ Restaurant.” The *PA Class* member who wishes to opt-out must also include his or her full name, address, and telephone number. *PA Class* members *may not* exclude themselves by telephone, fax, or email.
- (B) All *Requests for Exclusion* must be submitted by the *Bar Date*.
- (C) The date of submission is deemed to be the earlier of (i) the date the form is deposited in the U.S. Mail, postage pre-paid, as evidenced by the postmark; or (ii) the date the form is received by the *Claims Administrator*.
- (D) Any *PA Class Member* who submits a timely and valid *Request for Exclusion* will not (i) be bound by any orders or judgments entered in this *Litigation*; (ii) be entitled to benefits or relief under this *Settlement Agreement*; (iii) gain any rights by virtue of this *Settlement Agreement*; (iv) be bound by any releases contained in this *Settlement Agreement*; or (v) be entitled to object to the *Settlement* or appeal from any order of this *Court*.
- (E) Upon receipt of a *Request for Exclusion*, the *Claims Administrator* will notify *Class Counsel* and *Defendants' Counsel* and will provide *Class Counsel* with such individual’s last known telephone number.
- (F) If a fully completed and properly executed *Request for Exclusion* is not received by the *Claims Administrator* from a *PA Class* member by the *Bar Date*, then that *PA Class* member will be deemed to have forever waived his or her right to opt-out of the *PA Class*.

- (G) If a fully completed and properly executed *Claim Form* is not received by the *Claims Administrator* from a *Tipped Employee* by the *Bar Date*, then that individual will be deemed to have forever waived his or her right to opt-into the *FLSA Collective*.
- (H) If a *Tipped Employee* submits both a timely *Claim Form* and a timely *Request for Exclusion*, the *Claims Administrator* will promptly notify and send copies of the *Claim Form* and the *Request for Exclusion* to both *Class Counsel* and *Defendants' Counsel* and will provide *Class Counsel* with such individual's last known telephone number. The *Claims Administrator* will attempt to contact that individual to ascertain his or her intent. If those efforts are unsuccessful, whichever document was mailed later will govern, and if both documents were mailed simultaneously, or the sequence of mailings cannot be determined, then the *Claim Form* will govern.

4.10 Final Approval.

- (A) *Plaintiff* will file a motion seeking final approval of the *Settlement* (“*Final Approval Motion*”) with the *Court* in accordance with the *Court's* scheduling order. In the *Final Approval Motion*, *Plaintiff* will request that the *Court* determine, at or after the *Final Approval Hearing* (a) whether to enter a *Final Approval Order*, substantially in the form attached as Exhibit E, granting final approval of the *Settlement*, dismissing the *Action* with prejudice and entering judgment pursuant to Federal Rule of Civil Procedure 54(b); (b) whether the distribution of the *Settlement Amount* set forth in this *Settlement Agreement* should be approved or modified; (c) the amount of legal fees and expenses to be awarded to *Class Counsel* as contemplated by Section of this *Settlement Agreement*; and (d) the amount of *Service Payment*, if any, to be awarded to the *Plaintiff*.
- (B) The *Final Approval Motion* will ask the *Court* to (a) approve this *Settlement Agreement*; (b) certify the *PA Class* and the *FLSA Collective* exclusively and solely for settlement purposes; and (c) approve and enforce the *Released Claims* as set forth in Section 5 of this *Settlement Agreement*.
- (C) At the *Final Approval Hearing*, *Plaintiff* and *Defendants* will request that the *Court* rule on any *Objections* to the *Settlement* by any *Settlement Class* members and find that the *Settlement* is fair, reasonable and adequate, and enter the *Final Approval Order*.
- (D) The *Parties* agree to support entry of the *Final Approval Order*, including supporting the *Settlement* through any *Review Proceeding*. *Defendants* will not take any position with respect to *Class Counsel's* fee and expense request or *Plaintiff's Service Payment*, so long as disposition of those matters is substantially in accordance with the provisions of this *Settlement Agreement*. The *Parties*

otherwise covenant and agree to reasonably cooperate with one another and to take all actions reasonably necessary to effectuate the *Settlement Agreement* and to obtain a *Final Approval Order*.

4.11 Distribution of *Settlement Payments* to *Settlement Class Members*.

- (A) By the deadlines set forth in Section 3.6, *Defendants* will provide the *Claims Administrator* with the *Settlement Amount*.
- (B) The *Claims Administrator* will mail *Settlement Payments* to the last known address of *Settlement Class* members within fifteen (15) calendar days of receiving the *Settlement Amount*.
- (C) The *Parties* agree that each *Settlement Payment* to be issued to each *Settlement Class* member will be accounted for as follows: (i) fifty percent (50%) will be allocated to the claims asserted in the *Action* for which the individual is a participant (e.g., *PA Class* and/or *FLSA Collective*) for alleged unpaid wages and other alleged wage-related claims, and (ii) fifty percent (50%) will be allocated to the claims asserted in the *Action* for alleged liquidated damages, penalties, interest, and other relief. Each check sent to a *Settlement Class* member will clearly identify the amounts designated as either unpaid wages or liquidated damages/other relief.
 - (1) The portion of each *Settlement Payment* allocated to claims for alleged unpaid wages and other alleged wage-related damages will be subject to all required employee payroll taxes and deductions (e.g., federal income taxes, state incometaxes, employee's share of FICA taxes, and other state-specific statutory deductions) and other required deductions set forth within *Defendants'* payroll records (e.g., garnishments, tax liens, child support).
 - (2) The portion of each *Settlement Payment* allocated to alleged liquidated damages and other relief will be characterized as non-wage income to the recipient and shall not be subject to any withholdings. The *Claims Administrator* will report the wage parts to each *Settlement Class* member on an IRS Form W-2 and the non-wage part on an IRS Form 1099.
 - (3) The *Claims Administrator* will be responsible for issuing the settlement checks, less required withholdings and deductions, to each *Settlement Class* member and mailing the *Settlement Checks*, W-2s and 1099s to the *Settlement Class* members.
- (D) The back of each check distributed to *Settlement Class* members will state that "the check must be cashed within one-hundred eighty days (180) days or it will become void."
 - (1) If any *Settlement Check* is not cashed within the one-hundred eighty (180)

day period, that *Settlement Check* will be voided, and the *Claims Administrator* will place a stop-payment on the check. *Settlement Class* members with such voided checks will have irrevocably waived any right in or claim to a *Settlement Payment*, but the *Settlement Agreement* and all releases relating to their Released Claims will nevertheless be binding upon them. Any unclaimed funds resulting from such voided Settlement Checks shall be part of the *Cy Pres Distribution*.

- (E) Neither *Defendant*, *Defendant's Counsel*, *Class Counsel*, *Plaintiff's Counsel*, *Plaintiff*, nor the *Claims Administrator* will have any liability for lost or stolen checks, for forged signatures on checks, or for unauthorized negotiation of any checks funded by any portion of the *Settlement Amount*.
- (F) Without limiting the foregoing, if a *Settlement Class* member notifies the *Claims Administrator* that he or she believes that his or her *Settlement Check* has been lost or stolen, the *Claims Administrator* will immediately notify counsel for the *Parties* and stop payment on any such check.
- (1) If the *Settlement Check* in question has not been negotiated before the stop payment order, the *Claims Administrator* will issue a replacement check, from which the fees, if any, associated with the stop payment order will first be deducted. The *Settlement Class* member will have an additional thirty (30) calendar days to negotiate the re-issued check from the date of re-mailing.
- (2) If any *Settlement Check* is not cashed in that period of time, that *Settlement Check* will be voided. The funds from said *Settlement Check* will be considered part of the *Cy Pres Distribution*.
- (G) In addition to the *Settlement Amount*, *Defendants* will be responsible for any and all applicable employer tax contributions associated with wage payments, including but not limited to *Defendants'* share of the FICA and FUTA taxes, with respect to the amounts treated as wages. The *Claims Administrator* will calculate the employer share of taxes and provide *Defendants* with the total employer tax contributions. *Defendants* will deposit with the *Claims Administrator* the calculated employer tax contributions before the mailing of the *Settlement Payments* to *Settlement Class* members.
- (H) *Plaintiff*, *Defendants*, *Plaintiff's Counsel*, and *Defendants' Counsel* do not intend this *Settlement Agreement* to constitute legal advice relating to the tax liability of any *Settlement Class* member. To the extent that this *Settlement Agreement*, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state, or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties. Further, *Plaintiff*, *Defendants*, *Plaintiff's Counsel*, and *Defendants' Counsel* have not provided nor will provide any *Settlement Class* member with

any advice regarding the tax consequences of this *Settlement Agreement*.

- 4.12 *Cy Pres Distribution.*** If any portion of the *Settlement Amount* becomes, by operation of this *Settlement Agreement*, subject to a *Cy Pres Distribution*, the *Claims Administrator* shall distribute said funds to the recipient selected by the *Court* and set forth in the *Final Approval Order*. The *Parties* jointly propose the Luzerne County office of North Penn Legal Services as the *cy pres* recipient.
- 4.13 *Fees and Expenses Borne By Defendants.*** *Defendants* will bear sole responsibility for *Defendants' Counsel's* fees, expenses, and costs, as well as the fees, expenses, and costs of any other counsel who represented them in this *Action*. Further, *Defendants* will bear sole responsibility for all fees and costs associated any and all fees and expenses associated with their performance of terms under this *Settlement Agreement*, as well as all fees and costs associated with dissemination of any notice required by *CAFA* if *Defendants* deem such notice necessary. In addition, *Defendants* will bear sole responsibility for the payment of the employer's portion of payroll taxes regarding the part of the *Settlement Payments* attributable to wages. Should this *Settlement* become *Final*, under no circumstances whatsoever shall any portion of the *Settlement Amount* revert to *Defendants*.
- 4.14 *Class Counsel's Fees and Costs.***
- (A) *Class Counsel* may make an application to the *Court* for an award of *Plaintiff's Counsel's* fees and expenses in an amount not to exceed thirty-five percent (35%) of the *Settlement Amount*, plus reasonable expenses as awarded by the *Court*. Such application will be filed in connection with the *Parties' Final Approval Motion*.
 - (B) So long as *Class Counsel's* application for fees and expenses conforms to the terms of the paragraph 4.15(A), *Defendants* shall not object, oppose, or otherwise comment on *Class Counsel's* fee application.
 - (C) If the *Court* rules that any amount requested by *Class Counsel* for attorneys' fees, expenses or costs is excessive and reduces the same, only the reduced amount will be deemed to be *Plaintiff's Counsel's* fees and costs for purposes of this *Settlement Agreement*. Any amounts not awarded by the *Court* shall be redistributed among *Settlement Class* members as part of the *Net Settlement Amount*. Under no circumstances shall any portion of the *Settlement Payment* return to *Defendants* if the *Settlement* becomes *Final*.
 - (D) As soon as practicable after receiving the *Settlement Amount*, the *Claims Administrator* will wire transfer the amount representing *Plaintiff's Counsel's* attorneys' fees and expenses approved by the *Court* to *Class Counsel*.
 - (E) Before any payment of any amount designated as *Plaintiff's Counsel's* fees and costs, *Class Counsel* will provide the *Claims Administrator* with all information necessary to effectuate such payments (e.g., a fully executed IRS Form W-9). *Class Counsel* will be issued an IRS Form 1099 for their award of

Plaintiff's Counsel's fees and costs. *Class Counsel* will be solely responsible for how the amount is to be allocated amongst the firms comprising *Plaintiff's Counsel* and *Defendants* will have no responsibility whatsoever for this allocation.

- (F) Payment of *Class Counsel's* fees and costs as set forth in this *Settlement Agreement* and the *Court's Final Approval Order* will constitute full and final satisfaction of any and all obligations by *Defendants* to pay any person, attorney or law firm (including but not limited to *Plaintiff's Counsel*) for attorneys' fees, expenses or costs incurred on behalf of the *Settlement Class* and will relieve the *Released Persons* of any other claims or liability to any person for any attorneys' fees, expenses, and costs to which any person may claim to be entitled on behalf of the *Settlement Class* for this *Action*. *Defendants* will have no additional liability to *Plaintiff's Counsel* for fees and costs, including without limitation, administrative costs, expert fees and costs, or attorneys' fees and costs.
- (G) *Class Counsel* shall determine the allocation of any awarded attorney's fees and costs among *Plaintiff's Counsel*. *Defendants* shall have no responsibility, nor say, in the allocation of any award of fees and costs among *Plaintiff's Counsel*.

4.15 *Service Payment.*

- (A) *Class Counsel* may also make an application to the *Court* for a one-time *Service Payment* award to *Plaintiff*, in recognition of the work and services Ms. Rolon contributed to the case including, but not limited to, meetings with *Plaintiff's Counsel*, assumption of risks, serving as a class representative, and related activities (including assisting with *Class Counsel's* investigation, the drafting of the complaint, and responding to written discovery). The *Service Payment* will not exceed Two Thousand Five Hundred dollars (\$2,500.00). The final amount of the *Service Payment* will be determined by the *Court*. Any amount not awarded by the *Court* shall be redistributed among *Settlement Class* members as part of the *Net Settlement Amount*.
- (B) The *Claims Administrator* will make the *Service Payment* to *Plaintiff* in the amount approved by the *Court* within the same time period for distributing *Settlement Payment* amounts to the *Settlement Class* members.
- (C) The *Service Payment* will be treated as non-wage income, and the *Claims Administrator* will issue a Form 1099 to *Plaintiff* reflecting the value of the payment.

5. RELEASE OF CLAIMS; ASSIGNMENT.

5.1 Release of Claims.

- (A) Effective as of the *Final Effective Date*, the *Releasing Persons* will be deemed to forever and fully release and discharge *Defendants* and the *Owners*, and release and

hold harmless the *Released Persons*, as follows (collectively “Released Claims”):

- (1) *PA Class* members shall release *Released Persons* from any and all Pennsylvania wage-related claims relating to their employment at the Restaurant from January 1, 2022 through February 28, 2024, including, but not limited to any claims pursuant to the PMWA and the WPCL that such class member has, had, might have or might have had against any of the *Released Persons* relating to their employment at the Restaurant that in any way related to any of the facts that were alleged or that could have been alleged in the *Complaint*, asserted in the *Action*, by reason of the negotiations leading to this *Settlement*, or effectuation of this *Settlement*, even if presently unknown or un-asserted. (the “*PA Released Claims*”).
 - (2) *FLSA Collective* members release *Released Persons* from any and all federal wage-related claims relating to their employment at the Restaurant from January 1, 2022 through February 28, 2024, including but not limited to any claims pursuant to the FLSA that such individual has, had, might have or might have had against any of the *Released Persons* relating to their employment at the Restaurant that in any way related to any of the facts or claims that were alleged or that could have been alleged in the *Complaint*, asserted in the *Action*, by reason of the negotiations leading to this *Settlement*, or effectuation of this *Settlement*, even if presently unknown or un-asserted. (the “*FLSA Released Claims*”).
- (B) The *Parties* acknowledge and agree that the releases and covenants set forth in Section 5.1 are only coextensive with the monetary relief provided. Thus, for example, if an individual is only a *FLSA Collective* member, their release and covenants only apply to their FLSA claims. The *Parties* further acknowledge and agree that the releases and covenants set forth in Section 5.1 are only coextensive with the hours worked at a tipped rate as set forth in the *Payroll Data*, unless an augmentation is made pursuant to Section 4.6(A).

5.2 All members of the *Settlement Class* will be bound by the terms and conditions of this *Settlement Agreement*, the *Final Approval Order*, the judgment, and the releases set forth herein.

- (A) Any *Tipped Employee* who submits a timely and valid *Request for Exclusion* will not on behalf of themselves or the *PA Class* (i) be bound by any orders or judgments entered into this *Action* regarding the *PA Class*; (ii) be entitled to any benefits or relief provided or conferred to the *PA Class* under this *Settlement Agreement*; (iii) gain any rights provided or conferred to the *PA Class* by virtue of this *Settlement Agreement*; or (iv) be entitled to object to the *Settlement* or appeal any order of this *Court* as they pertain to the *PA Class*.
- (B) Any *Tipped Employee* who fails to submit a timely and valid *Claim Form* will not on behalf of themselves or the *FLSA Collective* (i) be bound by any orders or

judgments entered into this *Action* regarding the *FLSA Collective*; (ii) be entitled to any benefits or relief provided or conferred to the *FLSA Collective* under this *Settlement Agreement*; (iii) gain any rights provided or conferred to the *FLSA Collective* by virtue of this *Settlement Agreement*; or (iv) be entitled to object to the *Settlement* or appeal any order of this Court as they pertain to the *FLSA Collective*.

5.3 Defendants' Releases. Upon the *Final Effective Date*, *Defendants* will conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge *Plaintiff* and *Plaintiff's Counsel* ("*Defendants' Released Persons*") from any and all claims, counterclaims, crossclaims, complaints, charges, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, and obligations, including attorneys' fees, expenses and costs, arising from or related to the prosecution and/or resolution of the *Action* ("*Defendants' Released Claims*").

5.4 Scope of Releases. The release and discharge set forth in Section 5 will not include the release or discharge of any rights or duties of the *Parties* arising out of this *Settlement Agreement*, including the express warranties and covenants contained herein.

5.5 No Assignment. *Plaintiff* represents and warrants that she has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any part thereof or interest therein, including, but not limited to, any interest in the *Action*, or any related action.

6. NON-ADMISSION OF LIABILITY.

6.1 *Defendants* deny all of the allegations made by *Plaintiff*, and deny that they are liable or owe damages to anyone with respect to the alleged facts or causes of action asserted in the *Action*. By entering into this *Settlement Agreement*, *Defendants* in no way admit any violation of law or any liability whatsoever.

6.2 Likewise, by entering into this *Settlement Agreement*, *Defendants* in no way admit to the suitability of this case for class or collective action litigation other than for purposes of settlement. Settlement of the *Action*, negotiation and execution of this *Settlement Agreement*, and all acts performed or documents executed pursuant to or in furtherance of this *Settlement Agreement* or the *Settlement* (a) are not evidence of any wrongdoing or liability on the part of *Defendants* or of the truth of any of the factual allegations in the *Complaint* filed in the *Action*; (b) are not an admission or evidence of fault or omission on the part of *Defendants* in any civil, criminal, administrative or arbitral proceeding; and (c) are not an admission or evidence of the appropriateness of these or similar claims for class certification or administration or collective action treatment other than for purposes of administering this *Settlement Agreement*.

7. TERMINATION.

7.1 Grounds for Settlement Termination. Any *Party* may terminate the *Settlement Agreement* if the *Court* declines to enter the *Final Approval Order* or judgment substantially in the form submitted by the *Parties*, or if a Court of Appeals reverses the

entry of a *Final Approval Order* or judgment. Additionally, the following events are also grounds for termination:

- (A) *Plaintiff* may terminate this *Settlement Agreement* should the *Claims Administrator* determine that there is a material deviation in the *Total Hours* pursuant to Section 4.6.
- (B) Either *Party* may terminate this *Settlement Agreement* should a material condition set forth in Section 3 not be met or waived by the other *Party*.
- (C) *Plaintiff* may terminate this *Settlement Agreement* should one or more of the *Defendants* or *Owners* file for bankruptcy prior to the *Final Effective Date*.
- (D) In the event that *Defendants* declare bankruptcy prior to disbursement of the *Settlement Amount* to the *Settlement Class* members and any bankruptcy trustee seizes any portion of the *Settlement Amount*, any releases granted by the *Releasing Parties* shall be void irrespective of whether *Plaintiff* has exercised her right to terminate.
- (E) *Defendants* may terminate this *Settlement Agreement* if more than five percent (5%) of the *PA Class* members opt-out of this *Settlement* by filing timely *Requests for Exclusion*.

7.2 Procedures for Termination. To terminate this *Settlement Agreement* as specified above, the terminating *Party* will give written notice to the other *Party* no later than fourteen (14) calendar days after the terminating *Party* learns that the applicable ground for termination has been satisfied.

7.3 Effect of Termination.

- (A) Should this *Settlement Agreement* be terminated pursuant to Section 7, this *Settlement Agreement* will not be offered, received, or construed as an admission of any kind as to liability, damages, whether any class or collective is certifiable, or in any other matter by any *Party*. Neither the *Settlement Agreement*, any motions filed, settlement proposals exchanged by the *Parties*, nor Orders entered pursuant to the *Settlement Agreement*, will constitute an admission, finding or evidence that any requirement for representative litigation or certification as a class or collective action has been satisfied in this *Action* or any other action, except for the limited settlement purposes pursuant to the terms of the *Settlement Agreement*.
- (B) If this *Settlement Agreement* is canceled, rescinded, terminated, voided, or nullified, or the settlement of the *Action* is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be carried out by any court of competent jurisdiction:
 - (1) the *Settlement Agreement* will have no force or effect, and no *Party* will be bound by any of its terms with respect to the terminating *Parties*;

- (2) *Defendants* will have no obligation to make any payments to *Plaintiff*, any *Settlement Class* member, or *Class Counsel*, except that *Defendants* will be responsible for paying the *Claims Administrator's* fees and expenses for services rendered up to the date the *Claims Administrator* is notified that the *Settlement* has been terminated; and
- (3) any settlement class certified by the *Court* will be deemed decertified should the *Settlement Agreement* be terminated, and *Defendants* will retain the right to challenge the certification of any class proposed by *Plaintiff*.

8. **MISCELLANEOUS.**

8.1 **Parties' Authority.**

- (A) The signatories hereby represent that they are fully authorized to enter into this *Settlement Agreement* and bind the *Parties* hereto to the terms and conditions hereof.
- (B) The entity or individual signing this *Settlement Agreement* on behalf of *Defendants* represents and warrants that they have authority to sign on behalf of all *Defendants* and, accordingly bind all *Defendants* to this *Settlement Agreement*.
- (C) The *Class Notice* will advise all *Settlement Class* members of the binding nature of the release, and that the release will have the same force and effect upon members of the *Settlement Class* as if the *Settlement Agreement* were executed by each member of the *Settlement Class*.

8.2 Advice of Counsel. In entering into this *Settlement Agreement*, each *Party* represents and warrants that they have relied upon the advice of their attorneys, that they have completely read the terms of this *Settlement Agreement*, and that the terms of this *Settlement* have been explained to them by their attorneys. Each *Party* further represents and warrants that it fully understands and voluntarily accepts the terms of the *Settlement*.

8.3 Admissibility. This *Settlement Agreement* will be inadmissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this *Settlement Agreement*.

8.4 Severability. If any court with original or appellate jurisdiction over this *Action* issues a *Final* determination that any part of this *Settlement Agreement* is not enforceable, the *Parties* may (but will not be required to) jointly agree in writing to modify this *Settlement Agreement* to conform with such determination.

8.5 Notices. Any notice, demand or other communication under this *Settlement Agreement* (other than the *Class Notice* or other notices given at the direction of the *Court*) will be in writing and will be deemed duly given upon receipt if it is addressed to each of the intended

recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid) or delivered by reputable express overnight courier, with a copy by email.

IF TO *PLAINTIFF* OR THE *SETTLEMENT CLASS*:

CONNOLLY WELLS & GRAY, LLP
Gerald D. Wells, III
Email: gwells@cwglaw.com
101 Lindenwood Drive, Suite 225 Malvern, PA 19355
Telephone: (610) 822-3702

IF TO *DEFENDANTS*:

LITTLER MENDELSON, P.C.
Kevin Yam
Email: kyam@littler.com
900 Third Avenue, New York, NY 10022
Telephone: 212-583-2674

- 8.6 Cooperation between the *Parties*; Further Acts.** The *Parties* will cooperate fully with each other and will use their best efforts to obtain the *Court's* approval of this *Settlement Agreement* and all of its terms. Each of the *Parties*, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this *Settlement Agreement*.
- 8.7 Entire Agreement.** This *Settlement Agreement*, and accompanying exhibits, constitute the entire agreement between the *Parties* with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the *Parties*, including the Memorandum of Understanding executed by the *Parties'* respective counsel on June 14, 2023, will be deemed merged into this *Settlement Agreement*.
- 8.8 Binding Effect.** This *Settlement Agreement* will be binding upon the *Parties* and, with respect to *Settlement Class* members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.
- 8.9 Arm's Length Transaction; Materiality of Terms.** The *Parties* have negotiated all the terms and conditions of this *Settlement Agreement* at arm's length. All terms and conditions of this *Settlement Agreement* in the exact form set forth in this *Settlement Agreement* are material to this *Settlement Agreement* and have been relied upon by the *Parties* in entering into this *Settlement Agreement*.
- 8.10 Captions.** The captions or headings of the sections and paragraphs of this *Settlement Agreement* have been inserted for convenience of reference only and will have no effect upon the construction or interpretation of any part of this *Settlement Agreement*.

- 8.11 Construction.** The determination of the terms and conditions of this *Settlement Agreement* has been by mutual agreement of the *Parties*. Each party participated jointly in the drafting of this *Settlement Agreement*, and therefore the terms and conditions of this *Settlement Agreement* are not intended to be, and will not be, construed against any party by virtue of draftsmanship.
- 8.12 Governing Law.** This *Settlement Agreement* will in all respects be interpreted, enforced and governed by and under the laws of Pennsylvania, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law will govern.
- 8.13 Continuing Jurisdiction.** The *Court* will retain jurisdiction over the interpretation and implementation of this *Settlement Agreement* as well as any and all matters arising out of, or related to, the interpretation or implementation of this *Settlement Agreement* and of the settlement contemplated thereby. The *Court* will not have jurisdiction to modify the terms of the *Settlement Agreement* or to increase *Defendants'* payment obligations hereunder without the *Parties'* express agreement.
- 8.14 Waivers, Modifications, Amendments to be in Writing.** No waiver, modification or amendment of the terms of this *Settlement Agreement*, whether purportedly made before or after the *Court's* approval of this *Settlement Agreement*, will be valid or binding unless in writing, signed by or on behalf of all *Parties* and then only to the extent set forth in such written waiver, modification or amendment, subject to any required *Court* approval. Any failure by any *Party* to insist upon the strict performance by the other party of any of the provisions of this *Settlement Agreement* will not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this *Settlement Agreement*, and such party, notwithstanding such failure, will have the right thereafter to insist upon the specific performance of any and all of the provisions of this *Settlement Agreement*.
- 8.15 When Agreement Becomes Effective; Counterparts.** This *Settlement Agreement* will become effective upon its execution. The *Parties* may execute this *Settlement Agreement* in counterparts, and execution in counterparts will have the same force and effect as if *Plaintiff* and *Defendants* had signed the same instrument.
- 8.16 Confidentiality; Restrictions on Communications.**
- (A) The *Parties* agree that they will each not publicize the negotiations with respect to the *Settlement Agreement*. The *Parties* and their respective counsel agree that they will not issue a press release or hold any press conferences or initiate contact with a member of the press, about this case and/or the amount or terms of the *Settlement*, the settlement documents, settlement negotiations or settlement communications. If any of the *Parties* are contacted by the press about the *Settlement*, they will respond only that the case has been resolved.

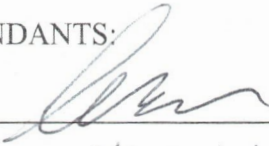
- (B) The *Parties* further agree that they shall not encourage or solicit *Settlement Class* members to opt-out or object to this *Settlement*.
- (C) Nothing in this *Settlement Agreement* shall prevent counsel for either of the *Parties* from communicating with the *Court* as may be required to carry out the terms of this *Settlement* and/or fulfill their ethical responsibilities under the *Settlement* and to their respective clients.
- (D) Nothing in this *Settlement Agreement* shall prevent *Plaintiff's Counsel* from communicating with *Settlement Class* members as may be required to carry out the terms of this *Settlement* and/or fulfill their ethical responsibilities under the *Settlement* and to their client and/or members of the *Settlement Class* which they represent.
- (E) Nothing in this *Settlement Agreement* shall prohibit *Plaintiff* from disclosing information concerning payments made to her to members of her immediate family and tax advisors. In addition, nothing shall prohibit or restrict *Plaintiff* from responding to any inquiry about this *Settlement* or its underlying facts and circumstances.
- (F) Nothing in this *Settlement Agreement* shall prevent any of the *Defendants* from disclosing the *Settlement* and its terms for accounting or public filing purposes, or to otherwise comply with any public reporting duties. If, however, prior to the *Final Effective Date*, any of the *Defendants* is contacted by a *Tipped Employee* inquiring as to any aspect of the *Settlement*, *Defendants* shall direct such individual to contact *Class Counsel*. Further, *Defendants* shall not initiate any communication regarding any aspect of this *Settlement* with any *Tipped Employee* prior to the *Final Effective Date*. Other than the foregoing, nothing in this *Settlement Agreement* shall otherwise prohibit or impede any *Defendants'* communication with any current *Tipped Employee* regarding any aspect of their employment. Further, *Defendants* acknowledge and agree that they shall use their best efforts to ensure that the *Owners* do not to communicate in any way with any *Tipped Employee* prior to the *Final Effective Date* about any aspect of this *Action* or this *Settlement Agreement*.
- (G) Further, nothing in this *Settlement Agreement* will prohibit or restrict such disclosure as is required by law or as may be necessary for the prosecution of claims relating to the performance or enforcement of this *Settlement Agreement*.

8.17 Additional Stipulations.

- (A) *Plaintiff* represents, stipulates and agrees that, as of the date of the execution of this *Settlement Agreement*, she is unaware of any claims she may have against any of the *Defendants* other than those asserted in the *Action*.
- (B) *Defendants* represent, stipulate, and agree that, as of the date of the execution of this *Settlement Agreement*, they are unaware of any claims they may have against

Plaintiff or Plaintiff's Counsel arising out of or relating to the prosecution and/or resolution of the *Action*.

Dated: 2/08/25

FOR DEFENDANTS:
By: 
Printed Name: CHUAN BAO LIN
Title: president.

FRANCESCA ROLON:

Dated: _____

APPROVED AS TO FORM BY
PLAINTIFF'S COUNSEL:

Dated: _____

Gerald D. Wells, III
CONNOLLY WELLS, & GRAY, LLP

Dated: _____

Edward Ciarimboli
FELLERMAN & CIARIMBOLI

Plaintiff or Plaintiff's Counsel arising out of or relating to the prosecution and/or resolution of the *Action*.

Dated: _____

FOR DEFENDANTS:

By: _____

Printed Name: _____

Title: _____


Dated: 2/11/25

FRANCESCA ROLON:

I

APPROVED AS TO FORM BY
PLAINTIFF'S COUNSEL:

Dated: 2/14/25



Gerald D. Wells, III
CONNOLLY WELLS, & GRAY, LLP

Dated: 2/14/25

/s/ Edward Ciarimboli (w/ express permission)
Edward Ciarimboli
FELLERMAN & CIARIMBOLI