

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

CHRISTOPHER WALTER, on behalf of
himself and all others similarly
situated,

Plaintiff(s),

v.

FORT WASHINGTON PA 693, LLC;
FRIENDLY’S RESTAURANT
NORRISTOWN, PA (#897), LLC;
KHALED KEZBARI; and DOE
DEFENDANTS 1-10,

Defendants.

Civil Action No. 2:17-cv-00178-ER

**JOINT STIPULATION OF SETTLEMENT AND RELEASE
AGREEMENT**

This Joint Stipulation of Settlement and Release Agreement (the “Settlement Agreement”), is entered into by and between Plaintiff Christopher Walter, on behalf of all other individuals Plaintiff seeks to represent, and Defendants Fort Washington, PA (#693), LLC (misidentified as Fort Washington PA 693, LLC in the caption), Norristown, PA (#897), LLC (misidentified as Friendly’s Restaurant Norristown, PA (#897), LLC in the caption), and Khaled Kezbari (collectively “Friendly’s” or “Defendants”).

1. BACKGROUND

Between May 2014 and February 2016, Plaintiff Christopher Walter worked as a server at one of the Friendly’s restaurants operated by Defendants. Mr. Walter received part of his compensation in tips. Mr. Walter claims Defendants failed to satisfy the notice requirements of the tip credit provisions in federal and state law and, thus, failed to pay Tipped Employees at least the applicable minimum wage for all hours worked. Plaintiff also claimed that Defendants failed to pay all

overtime pay due and owing, required Tipped Employees to work off the clock, and to spend a significant portion of their shift performing non-tip generating work. Defendants deny these allegations.

On January 12, 2017, on the basis of those alleged facts, Plaintiff sued Defendants in the United States District Court for the Eastern District of Pennsylvania at Case No. 2:17-CV-00178 (the “Action”). On his own behalf, and on behalf of a putative class and putative collective, Mr. Walter asserted claims under the Pennsylvania Minimum Wage Act (“PMWA”), the Pennsylvania Wage Payment Collection Law, Pennsylvania common law, and the Fair Labor Standards Act (“FLSA”).¹ Plaintiff sought recovery of alleged unpaid wages, liquidated damages, and attorneys’ fees and costs, as well as injunctive relief. On April 17, 2017, Defendants filed a motion to dismiss Plaintiff’s claims. Thereafter, the Court heard argument on Defendants’ motion on May 3, 2017, wherein the Court granted in part and denied in part Defendants’ motion and providing Plaintiff with a period of time to file an amended complaint addressing certain of the deficiencies raised in Defendants’ motion.

On May 18, 2017, Plaintiff filed his Second Amended Complaint (“Complaint”) to which Defendants filed their Answer, denying Plaintiff’s allegations and asserting numerous affirmative defenses. Thereafter, each of the Parties propounded discovery on the opposing side. Thereafter, the Parties, through their counsel, had several discussions regarding Plaintiff’s theory of liability and Defendants proffered defenses.

On July 20, 2017, the Parties jointly sought to have all case management deadlines stayed so as to permit them time to focus on their settlement efforts. The Court granted this request on July 24, 2017. On September 27, 2017, the Parties participated in a settlement conference before Magistrate Judge Rueter. While productive, this settlement conference did not bear fruit. Rather, it concluded with Plaintiff requesting certain information so as to permit him to make a formal settlement demand and Defendants requesting certain case law from Plaintiff that supported Plaintiff’s theory of the case.

On October 13, 2017, after the parties exchanged the requisite information, Magistrate Judge Rueter held a second settlement conference. Ultimately, with the assistance of Magistrate Judge Rueter, that settlement conference led to a

¹ Plaintiff also brought claims against Friendly’s Ice Cream, LLC. However, the claims against that defendant were subsequently dismissed by Plaintiff and an Amended Complaint was filed on March 13, 2017.

settlement proposal, through which the Parties seek to resolve all claims that were or could have been asserted in the Action. However, it took two additional telephone conferences with Magistrate Judge Rueter before a settlement in principle could be reached.

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 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 likewise agree settlement 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 *Christopher Walter, individually and on behalf of all others similarly situated v. Fort Washington PA 693, LLC, et al.*, Civil Action No. 17-cv-00178 (ECR), in the United States District Court for the Eastern District of Pennsylvania. The terms Action and Litigation, as used in this Settlement Agreement, shall have the same meaning.
- 2.2 Bar Date.** Sixty (60) days after the date on which the Claims Administrator first mails the Class Notice to the Class Members. The Bar Date is the date on which the Claims Administrator must receive an individual Class Member's Claim Form for such documents to be considered timely and is also the deadline for all opt-outs to be received and objections to be raised.
- 2.3 Claim Form.** The form mailed with the Notice Packet for Class Members to complete before become Participating Settlement Class Members. 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.
- 2.4 Claims Administrator.** The claims-administration firm selected by Plaintiff with the approval of Defendants, whose approval shall not be unreasonably withheld, that shall provide appropriate and timely administrative assistance in administering the settlement of this Litigation as set forth in this Settlement Agreement.
- 2.5 Class Counsel.** Connolly Wells & Gray, LLP and Kalikhman & Rayz,

LLC.

- 2.6 Class Member.** Any current or former Tipped Employee employed by Defendants within the Commonwealth of Pennsylvania who worked one or more Work Hours during the Class Period.
- 2.7 Class Notice.** The notice substantially in the form of Exhibit 1 to be directed to Class Members. The purpose of the Class Notice is to inform Class Members about the Litigation and this Settlement Agreement.
- 2.8 Class Period.** The period of time between January 12, 2014 and January 15, 2017.
- 2.9 Court.** The United States District Court for the Eastern District of Pennsylvania.
- 2.10 Cy Pres Distribution.** Any money that may be distributed pursuant to Section 4.12 of this Settlement Agreement.
- 2.11 Defendants.** Fort Washington, PA (#693), LLC (misidentified as Fort Washington PA 693, LLC in the caption), Norristown, PA (#897), LLC (misidentified as Friendly’s Restaurant Norristown, PA (#897), LLC in the caption) and Khaled Kezbari.
- 2.12 Defendants’ Counsel.** Dilworth Paxson LLP.
- 2.13 Effective Date.** The first day after the Settlement becomes Final.
- 2.14 Estimated Settlement Payment.** “Estimated Settlement Payment” will have the meaning set forth in Section 4.7.
- 2.15 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.
- 2.16 Final Approval Hearing.** The hearing scheduled by the Court 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 between 101 and 120 days after entry of the Preliminary Approval Order, to provide adequate time for any notice required by the Class Action Fairness Act (“CAFA”).

- 2.17 Final Approval Order.** The document substantially in the form attached hereto as Exhibit B, 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 Class Members; (2) certification of the class of Class Members 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 Litigation with prejudice.
- 2.18 Final Effective Date.** The later of (i) the Claims Administrator’s receipt of Defendant’s October 1, 2018 payment of that portion of the Settlement Amount or (ii) the date the Settlement Agreement becomes Final.
- 2.19 Litigation.** The legal action captioned *Christopher Walter, individually and on behalf of all others similarly situated v. Fort Washington PA 693, LLC, et al.*, Civil Action No. 17-cv-00178 (ECR), in the United States District Court for the Eastern District of Pennsylvania. The terms Litigation and Action, as used in this Settlement Agreement, shall have the same meaning.
- 2.20 Notice Packet.** The (i) Class Notice mailed to Class Members in accordance with the Settlement Agreement; (ii) Estimated Settlement Payment for the individual Class Member to whom the Class Notice was mailed; and (iii) Claim Form.
- 2.21 Participating Settlement Class Members.** Every member of the Settlement Class who submits a valid and timely Claim Form in accordance with the terms of this Settlement Agreement. In accordance with the terms of this Settlement Agreement, only Participating Settlement Class Members will release their FLSA claims and only Participating Settlement Class Members will receive any money in connection with this Settlement.
- 2.22 Parties.** Plaintiff and Defendants and, in the singular, “Parties” refers to any

of them, as the context makes apparent.

- 2.23 Plaintiff.** Named plaintiff Christopher Walter.
- 2.24 Preliminary Approval Order.** The document substantially in the form attached hereto as Exhibit A, 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 Christopher Walter as class representative and the law firms Connolly Wells & Gray, LLP and Kalikhman & Rayz, LLC as Class Counsel; (f) a finding that the proposed manner of serving the Class Notice to the members of the Settlement Class is the best notice practicable under the circumstances; and (g) a Bar Date.
- 2.25 Released Persons.** Defendants and each of their past, present, and future members, parents, affiliates, subsidiaries, divisions, predecessors, franchisors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers assigns, officers, directors, trustees, agents, employees, attorneys, contractors, representatives, divisions, units, branches and any other persons or entities acting on Defendants' behalf.
- 2.26 Releasing Persons.** Every member of the Settlement Class and his or her respective heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, estates, personal representatives, successors-in-interests, and assigns.
- 2.27 Restaurants.** The establishments operated by Fort Washington, PA (#693), LLC and/or Norristown, PA (#897), LLC doing business as "Friendly's" in the Commonwealth of Pennsylvania.
- 2.28 Review Proceeding.** "Review Proceeding" will have the meaning set forth in Section 2.14.
- 2.29 Service Payment.** The amount to be approved by the Court for payment to Plaintiff Christopher Walter in recognition for his efforts in assisting in the prosecution of this Litigation on behalf of Class Members.
- 2.30 Settlement Agreement.** This Settlement Agreement, including any modifications or amendments adopted pursuant to Section 8.4.
- 2.31 Settlement Amount.** The \$121,836.00 payment that Defendants would pay

to settle the Litigation as described in this Settlement Agreement, inclusive of Class Counsel's fees and costs, the Service Payment, and the Claims Administrator's fees. The Settlement Amount will be paid in installments as set forth in this Settlement Agreement. Failure to make any required payment shall render this Settlement Agreement null and void. Except as set forth in Paragraphs 4.6.1, 4.12, and/or 4.13, Defendants may not be called upon or required to contribute additional monies above the Settlement Amount under any circumstances whatsoever. Any interest earned on the Settlement Amount during the period of settlement administration under this Settlement Agreement will be considered part of the Settlement Fund. To effectuate this Settlement, Defendants agree to be jointly and severally liable for the payment of the Settlement Amount.

- 2.32 Settlement Class.** Plaintiff and any Class Member who does not opt-out within the specified period in accordance with the requirements of this Settlement Agreement. Defendants represent and warrant that all members of the Settlement Class are Tipped Employees.
- 2.33 Settlement Fund.** An interest-bearing escrow account established and maintained by the Claims Administrator for the sole purpose of receiving Defendants three equal payments comprising the Settlement Amount.
- 2.34 Settlement Payment.** The payment to which a Participating Settlement Class Member will receive pursuant to the Settlement Agreement.
- 2.35 Tipped Employee.** Any individual employed by Defendants who worked under the job code of "server" during the Class Period where Defendants claimed or attempted to claim a "tip credit" for that employee pursuant to Section 203(m) of the FLSA.
- 2.36 Tip Credit.** The difference between the full minimum wage (\$7.25) and the hourly rate actually paid by Defendants to an individual Class Member for a shift during a Work Week.
- 2.37 Work Hour.** Any hour worked by a Tipped Employee for Defendants during the Class Period 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 68,847.17 according to Defendants' records.

3. SETTLEMENT CONDITIONS

The Settlement will not become effective until every one of the conditions and

obligations in Sections 3.1 through 3.7 has been either satisfied or waived in writing by the Party entitled to the benefit of the condition or obligation. Each of the Settlement Conditions is a material term. Except as otherwise provided in this Settlement Agreement, the Parties will use their best efforts to cause each of the following Settlement Conditions to occur and will support approval of the Settlement before the Court.

- 3.1 Dismissal of the Doe Defendants.** On or before the Parties move for preliminary approval, Plaintiff will file with the Court a stipulation dismissing the Doe Defendants.
- 3.2 Defendants' Representations.** On or before December 15, 2017, Defendants' Counsel shall provide Class Counsel with a declaration (executed under penalty of perjury) from Defendants' Vice President of Operations, John Genest, detailing how Defendants' ability to pay a judgment is impacted by financial hardship. The Parties stipulate and agree that this declaration shall be filed with the Court in support of the Parties' motion for preliminary approval of this Settlement Agreement.
- 3.3 Preliminary Approval of Settlement Agreement by the Court.** On or before December 22, 2017, 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 A.
- 3.4 Entry of Final Approval Order by the Court.** The Parties will jointly request that the Court schedule a Final Approval Hearing within 101 - 120 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 B.
- 3.5 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 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.
- 3.6 Defendants' Payment of the Settlement Amount.** Defendants shall cause to be paid into the Settlement Fund the Settlement Amount pursuant to the

following schedule:

- One-third shall be deposited in the Settlement Fund within thirty days of the Court's entry of an order granting preliminary approval of the Settlement;
- One-third shall be deposited in the Settlement Fund within thirty days of the Court's entry of an order granting final approval of the Settlement; and
- The final one-third plus additional costs of the Claims Administrator as per section 4.5 herein shall be deposited in the Settlement Fund (i) thirty days after the Settlement becomes Final or (ii) October 1, 2018, whichever is later.

Defendants stipulate and agree that their failure to make any one of these payments on or before the deadlines set forth above shall immediately render this Settlement Agreement, as well as any releases granted by the Settlement Class and/or Participating Settlement Class Members, null and void.

3.7 Defendants' Do Not Declare Bankruptcy. The Settlement Fund is disbursed in accordance with Section 4.12 of this Settlement Agreement. In the event any one or more of Defendants declare bankruptcy prior to disbursement of the Settlement Fund to Participating Settlement Class Members and any bankruptcy trustee seizes any portion of the Settlement Fund, any releases granted by the Settlement Class and/or Participating Settlement Class Members shall immediately be deemed null and void.

4. TERMS OF SETTLEMENT

4.1 Settlement Amount. Defendants will pay the Settlement Amount, which includes Class Counsel's fees and costs as awarded by the Court, any Service Payment, and the Claims Administrator's fees under the Settlement Agreement. Also being paid from the Settlement Amount will be all Participating Settlement Class Members' claims. Any uncashed checks will be subject to a Cy Pres Distribution as set forth in Section 4.12. In return for the Settlement Amount, Defendant will obtain (among other things) the Release described in Section 5.

4.2 Class Certification. In connection with preliminary and final approval of the proposed Settlement, Plaintiff will, through Class Counsel, seek orders

(preliminary and final, respectively) certifying the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(3). For Settlement purposes only, and to effect this Settlement Agreement, Defendants will not object to such certification.

- 4.3 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 A, which, among other things, will (a) preliminarily approve this Settlement Agreement; (b) direct the time and manner of the Class Notice to be served upon the Settlement Class; (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 Settlement Class 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 members of the Settlement Class is the best notice practicable under the circumstances.
- 4.4 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 within 101 - 120 calendar days after entry of the Preliminary Approval Order; and (c) seek entry of the Final Approval Order.
- 4.5 Retention of Claims Administrator.** The Claims Administrator will be responsible for the claims-administration process and distribution to Class Members 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 Fund. 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. To the extent that the final bill of the Claims Administrator exceeds \$5,000.00, Defendants will add to the Settlement Amount up to \$2,500.00 additional to offset such additional fees in the form of additional monies added to the third and final payment as discussed in Section 3.6 herein. In no case should the Settlement Amount paid by Defendants exceed \$124,336.00 due to Claims Administration costs.
- 4.6 Class List.** Within fourteen (14) 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 Class Member: name, last known address, Social Security Number, actual hourly rate of pay paid by Defendant (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, and any other required deductions set forth within Defendants’ payroll records (*e.g.*, garnishments, tax liens, child support). At the same time, Defendant will also provide Class Counsel with a list, in electronic form, containing following information for each Class Member during the Class Period: name, last known address, , and total hours worked during the Class Period.

4.6.1 Total Work Hours. Defendants have represented that during the Class Period, they claimed a “tip credit” for 68,847.17 hours worked by the Settlement Class. Should during the course of administering this Settlement, it be determined that the amount of actual hours Defendants claimed a “tip credit” for deviates by three percent (3%) or more from Defendants’ representation, the Settlement Amount shall be adjusted on a “dollar for dollar” basis.

4.7 Calculation of Settlement Payments for Plaintiff and Class Members.

(A) **Estimated Settlement Payment.** The Notice Packet will contain an Estimated Settlement Payment for the individual Class Member to whom it was mailed. The Claims Administrator will calculate the Estimated Settlement Payment in four steps:

- (1) The Claims Administrator will deduct from the Settlement Amount (i) the maximum amount of attorneys’ fees and expenses permitted, (ii) the maximum Service Payment sought, 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 Class Member, the Claims Administrator will total the amount of Tip Credit taken by Defendants for all Work Hours during the Class Period. For example, if an individual was paid \$2.83 per hour, resulting in Defendants taking a Tip Credit of \$4.42 per hour, and that employee worked 10 hours during the Class Period, that individual Class Member would be owed \$44.20. This number will be referred to as the “Individual Damage Amount.”

- (3) The Individual Damage Amounts for all Class Members will then be added together by the Claims Administrator to determine the “Class Members’ Total Damage Amount.” The Estimated Maximum Net Settlement Amount will then be divided by the Class Members’ Total Damage Amount.
 - (4) The Claims Administrator will then multiply the resulting fractional amount by a Class Member’s Individual Damage Amount to determine that Class Member’s Estimated Settlement Payment.
- (B) **Settlement Payment.** Only Participating Settlement Class Members will receive money in connection with this Settlement. Once the Settlement becomes Final, the Claims Administrator will calculate Settlement Payments for Participating Settlement Class Members in four steps:
- (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 Participating Settlement Class Member, the Claims Administrator will total the amount of Tip Credit taken by Defendants for all Work Hours during the Class Period. This number will be referred to as the “Participating Individual Damage Amount.”
 - (3) The Participating Individual Damage Amount for all Participating Settlement Class Members will then be added together by the Claims Administrator to determine the “Participating Settlement Class Members’ Total Damage Amount.”
 - (4) The Net Settlement Amount will be divided by the Participating Settlement Class Members’ Total Damage Amount.
 - (5) The resulting fractional amount will then be multiplied by a Participating Individual Damage Amount to determine that Participating Settlement Class Member’s Settlement Payment.

- (6) To avoid a windfall to any individual Participating Settlement Class Member, no Participating Settlement Class Member's Settlement Payment will be higher than five times that individual's Estimated Settlement Payment. Should any Participating Settlement Class Member's Settlement Payment be higher than five times his or her Estimated Settlement Payment, such amount will be reduced accordingly and with such reduction subject to the Cy Pres Distribution as set forth in Section 4.12 (J).
- (C) For purposes of performing the calculations set forth above, the Claims Administrator will rely on the hours recorded in Defendants' timekeeping system when determining the total Work Hours for Class Members or Participating Settlement Class Members. Further, the Claims Administrator will also rely on Tip Credit claimed, as recorded in Defendants' timekeeping system, when performing the calculations set forth above.
- (D) Plaintiff, Class 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 Participating Settlement Class Member's Settlement Payment.
- (E) Plaintiff is a member of the Settlement Class by operation of this Settlement Agreement. To receive his Settlement Payment, however, the Plaintiff must properly complete and timely return a Claim Form for receipt by the Claims Administrator on or before the Bar Date, as directed in the Class Notice. Plaintiff's Settlement Payment will be calculated in accordance with the formula set forth above.
- (F) Class Members are members of the Settlement Class if they do not opt out during the sixty (60) day claim period. If any Class Member desires to receive his or her part of the Settlement Amount, he or she must complete and timely return a Claim Form for receipt by the Claims Administrator on or before the Bar Date, as directed in the Class Notice.
- (G) Any Class Member who wishes to challenge the calculation of his or her Settlement Payment, or any other 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. The Claims Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal.

- (H) If a Class Member submits a Claim Form to the Claims Administrator on or before the Bar Date, but the document is incomplete or otherwise deficient in one or more aspects, the Claims Administrator will (no later than seven (7) calendar days following the Bar Date) return the deficient document to the individual with a letter explaining the deficiencies and stating that the individual will have fourteen (14) calendar days from the date of the deficiency notice is postmarked to the Class Member to correct the deficiencies and resubmit the document. The envelope containing the corrected and resubmitted document must be postmarked within fourteen (14) calendar days of the date the deficiency notice is mailed to be considered timely. The Claims Administrator's decision on whether the deficiency has been remedied will be binding on the Parties and the Class Member.
- (I) Ten days Before the Final Approval Hearing, the Claims Administrator will certify jointly to Class Counsel and Defendants' Counsel a list of all (i) Participating Settlement Class Members and (ii) all individuals who elected to opt-out of the Settlement Class. For Participating Settlement Class Members, the Claims Administrator shall indicate (a) whether he or she provided an executed and compliant Claim Form; and (b) the total Settlement Payment due to that individual pursuant to this Settlement Agreement. The Claims Administrator will also indicate whether any challenges to a Participating Settlement Class Member's Settlement Payment has been received and, if so, the status of that challenge. Finally, the Claims Administrator shall notify the Parties by this same date whether any Cy Pres Distribution is required based on the Participating Settlement Class Members' Settlement Payments.

4.8 Class Notice.

- (A) The Claims Administrator will mail the Notice Packet via First Class Mail to each Class Member 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, inform Class Members that only individuals submitting a timely Claim Form to the Claims Administrator will receive any money under this Settlement, and advise the Class Member whether Defendants' records indicate their potential settlement payment is subject to any required deductions (e.g., garnishments, tax liens, child support).

- (B) Before mailing, the Claims Administrator will attempt to confirm the accuracy of the addresses of each Class Member through the United States Post Office's National Change of Address ("NCOA") database. If a Class Notice 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 Class Members for whom it obtains more recent addresses.
- (C) During the Notice Period, Defendants will conspicuously place at least one copy of the Class Notice in their Restaurants, near the DOL posters.
- (D) The Claims Administrator will mail a Court-approved Class Notice to any Class Member 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 Class Members. Class Counsel may nevertheless communicate with Plaintiff and respond to inquiries they receive from Class Members during the Notice Period. Defendants may nevertheless communicate with their current or former employees regarding their normal business operations. Defendants agree that they shall advise any current employee who is a Class Member to contact Class Counsel regarding any questions or inquiries involving the Litigation or this Settlement Agreement.
- (E) Upon mailing of the Notice Packet, either the Claims Administrator or Class Counsel may establish a settlement website (or a link on their existing website) to assist in providing Class Members 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 distribution of the Settlement Fund to Participating Settlement Class Members.

- (F) The Claims Administrator will provide to Defendants' Counsel and Class Counsel at least once every two weeks, a report concerning any opt-outs or objections raised by Class Members. 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 opt-outs or objections received from Class Members.

4.9 Objections. Only Class Members may object to the Settlement. To object to the Settlement, the Class Member 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. Class Members who wish to object and be represented by counsel will do so at their own expense. No 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 Class Member.

4.10 Opt-Out/Request for Exclusion.

- (A) For a Class Member to exclude himself or herself from the Settlement ("opting-out"), he or she must write and submit a "Request for Exclusion" in the form of a letter that states: "I request to be excluded from the settlement in *Walter v. Fort Washington PA 693, LLC, et al.*, Civil Action No. 17-cv-00178 (E.D. Pa.). I affirm that I was employed by Defendants as a Tipped Employee on one or more days between January 12, 2014 and January 15, 2017." The Class Member who wishes to opt-out must also include his or her full name, address, and telephone number. 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 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; or (iv) 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 Class Member by the Bar Date, then that Class Member will be deemed to have forever waived his or her right to opt-out of the Settlement Class.
- (G) If a Class Member 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 her 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.

4.11 Final Approval.

- (A) Plaintiff will file a motion seeking final approval of the Settlement ("Final Approval Motion") with the Court no later than 30 calendar days before the Final Approval Hearing is scheduled. 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 B, granting final approval of the Settlement, dismissing the Litigation 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 Agreement should be approved or modified; (c) the amount of legal fees and expenses to be awarded to Class Counsel as contemplated by Section 4.14 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 Settlement Class; and (c) permanently enjoin (i) the members of the Settlement Class from bringing in any forum any of the PA Released Claims against any of the Released Persons, (ii) the Participating Settlement Class Members from bringing in any forum any of the FLSA Released Claims against any of the Released Persons, and (iii) Defendants from bringing in any forum any of Defendants' Released Claims.
- (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.

4.12 Distribution of Settlement Payments to Final Settlement Class.

- (A) Within fourteen (14) calendar days after the Final Effective Date, the Claims Administrator will mail the Final Settlement Payments to the Participating Settlement Class Members' last known addresses.
- (B) The Parties agree that each Final Settlement Payment to be issued to each Participating Settlement Class Member will be separated into two equal amounts: fifty percent (50%) will be allocated to the claims asserted in the Litigation for alleged unpaid wages, and fifty percent (50%) will be allocated to the claims asserted in the Litigation for alleged liquidated damages and other relief.

- (1) The part allocated to claims for alleged unpaid wages and other alleged wage-related damages will be subject to all required employee paid payroll taxes and deductions (*e.g.*, federal income taxes, state income taxes, 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). The Parties and the Claims Administrator may rely on Defendants' payroll records regarding all payroll deductions.
 - (2) Neither Plaintiff, Defendants, Class Counsel, nor Defendants' Counsel shall have any liability regarding the propriety of any deduction made the Claims Administrator as set forth in paragraph above. Further, neither Plaintiff, Defendants, Class Counsel, nor Defendants' Counsel has provided or will provide any Class Member or Settlement Class Member with any advice regarding any tax deduction relating to this Settlement Agreement.
 - (3) The part 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 part to each Participating Settlement Class Member on an IRS Form W-2 and the non-wage part on an IRS Form 1099.
 - (4) The Claims Administrator will be responsible for issuing the settlement checks, less required withholdings and deductions, to each Participating Settlement Class Member and mailing the settlement checks, W-2s and 1099s to the Participating Settlement Class Members.
- (C) The back of each check distributed to Participating Settlement Class Members will state that "the check must be cashed within ninety (90) days or it will become void." The Claims Administrator will also send a cover letter stating the same.
- (D) If any settlement check is not negotiated in the 90-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 contained herein nevertheless will be binding upon them. One hundred percent (100%) of such unclaimed funds will be subject to the Cy Pres Distribution as set forth in Section 4.12 (J).

- (E) Neither Defendants, Defendants' Counsel, Class Counsel, Plaintiff, nor the Claims Administrator will have any liability for lost or stolen settlement checks, for forged signatures on settlement checks, or for unauthorized negotiation of settlement checks.
- (F) Without limiting the foregoing, if a Participating 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 Participating 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 negotiated in that period of time, that settlement check will be voided. One hundred percent (100%) of such unclaimed funds will be subject to the Cy Pres Distribution as set forth in Section 4.12 (J).
- (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 Participating Settlement Class Members. Thereafter, the Claims Administrator will pay the employer portion of any tax contributions.

- (H) Neither Plaintiff, Defendants, Class Counsel, nor Defendants' Counsel has provided or will provide any Class Member or Settlement Class Member with any advice regarding the tax consequences of this Settlement Agreement.
- (I) If any portion of the Settlement Amount becomes, by operation of this Settlement Agreement, subject to a Cy Pres Distribution, the Parties shall jointly file a motion with the Court seeking approval for distribution of said amount to the Parties' mutually-agreed upon organization. The Parties shall use their best efforts to agree upon an organization that provides, among other things, legal aide to low-income citizens of the Commonwealth of Pennsylvania.

4.13 Fees and Expenses Borne By Defendants. Defendants will bear sole responsibility for any and all fees, expenses, and costs related in any way to this Litigation, including but not limited to those incurred by Defendants' Counsel. Further, Defendants will bear sole responsibility for all fees and costs associated with dissemination of any notice required by CAFA. Defendants will also bear sole responsibility for the payment of the employer's part of any and all taxes regarding the part of the Settlement Payment attributable to wages. Should this Settlement not become Final for any reason, Defendants will bear sole responsibility for any actual fees and/or expenses incurred by the Claims Administrator.

4.14 Class Counsel's Fees and Costs.

- (A) Class Counsel may make an application to the Court for an award of Class Counsel's fees in an amount not to exceed thirty-five percent (35%) of the Settlement Fund, plus reasonable expenses as awarded by the Court. Such application will be filed in connection with the Parties' Final Approval Motion.
- (B) 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 Class Counsel's fees and costs for purposes of this Settlement Agreement.
- (C) Upon the Final Effective Date, the Claims Administrator will wire transfer the amount representing Class Counsel's attorneys' fees and expenses approved by the Court to Class Counsel. Before any payment of any amount designated as Class 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 Class Counsel's fees and costs. Class Counsel will advise the Claims Administrator of how the amount is to be allocated amongst the firms comprising Class Counsel and Defendants will have no responsibility whatsoever for this allocation. Class Counsel may, at their election, seek an order from the Court awarding disbursement of one-half of the attorneys' fees and expenses approved by the Court any time after entry of the Final Approval Order should an appeal be filed in this Action. Defendants agree not to oppose such a motion.

- (D) Should the Settlement not become Final, Class Counsel will, within five (5) days of receiving such request, promptly return all sums distributed as attorneys' fees and expenses to Defendants.
- (E) 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 Class 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 Litigation. Defendants will have no additional liability to Class Counsel for fees and costs, including without limitation, administrative costs, expert fees and costs, or attorneys' fees and costs.

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 Mr. Walter contributed to the case including, but not limited to, meetings with Class Counsel, assumption of risks, serving as a class representative, and related activities (including assisting in the preparation of discovery and attending the two settlement conferences). The Service Payment will not exceed Five Thousand Dollars (\$5,000.00). The final amount of the Service Payment will be determined by the Court.

- (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 Participating 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) As of the Effective Date, the Releasing Persons will be deemed to forever and fully release and discharge Defendants, and release and hold harmless the Released Persons, from any and all Pennsylvania wage-related claims, including but not limited to any claims pursuant to the PMWA and/or WPCL that any of the Releasing Persons has, had, might have or might have had against any of the Released Persons based on any act or omission during the Class Period that in any way relate to any of the facts or claims that were alleged or that could have been alleged in the Litigation relating to Defendants' Restaurants, or by reason of the negotiations leading to this Settlement, even if presently unknown or un-asserted (the "Released Claims").
- (B) The Releasing Persons further covenant and agree that, since they are settling disputed claims, they will not accept, recover or receive any back pay, liquidated damages, other damages, penalties, or any other form of relief based on any of the Released Claims asserted or settled in the Litigation which may arise out of, or in connection with any other individual, representative, class or any administrative remedies pursued by any individual(s) or any federal, state or local governmental agency against any of the Released Persons. Releasing Persons further acknowledge and agree that they are precluded from pursuing any Released Claim Releasing Persons has, had, might have or might have had against any of the Released Persons based on any act or omission that occurred during the period of time during the Class Period.
- (C) As of the Effective Date, all Participating Settlement Class Members

will be deemed to forever and fully release and discharge Defendants, and release and hold harmless the Released Persons, from any and all federal wage-related claims, including but not limited to any claims pursuant to the Fair Labor Standards Act that any Participating Settlement Class Member has, had, might have or might have had against any of the Released Persons based on any act or omission during the Class Period that in any way relate to any of the facts or claims that were alleged or that could have been alleged in the Litigation relating to Defendants' Restaurants or by reason of the negotiations leading to this Settlement, even if presently unknown or un-asserted (the "FLSA Released Claims").

- 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.
- 5.3 Defendants' Releases.** Upon the Effective Date, Defendants will conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge Plaintiff and Class 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 of the Litigation ("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 he 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 Litigation, or any related action.
- 5.6 Null and Void.** Should Defendants not make any one or more of the payments comprising the Settlement Amount in accordance with the dates set forth in Section 3.6, this Settlement Agreement, including all releases contained therein, shall immediately become null and void notwithstanding any partial payments made by Defendants towards the Settlement Amount or the fact that this Settlement may have become Final, provided that

Defendants shall have seven (7) calendar days to cure a non-payment after receiving notification of same from Plaintiff's counsel.

6. NON-ADMISSION OF LIABILITY

6.1 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 Litigation, 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 Litigation; (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 in the form submitted by the Parties, or if a Court of Appeals reverses the entry of a Final Approval Order or judgment.

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 Litigation 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 Litigation is barred by operation of law, is invalidated, is not approved, or otherwise is ordered not to be carried out by any Court,
 - (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 Participating Settlement Class Member, or Class Counsel, except that Defendant will be responsible for paying the Claims Administrator 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.

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 Class Notice will advise all 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 it has relied upon the advice of its attorneys, that it has completely read the terms of this Settlement Agreement, and that

the terms of this Settlement have been explained to it by its 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 Litigation 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@cwg-law.com
2200 Renaissance Blvd., Suite 275
King of Prussia, PA 19406
Telephone: (610) 822-3700

IF TO DEFENDANTS:

DILWORTH PAXSON LLP
Marjorie Obod
Email: mobod@dilworthlaw.com
1500 Market Street, Suite 3500E
Philadelphia, PA 19102
Telephone: (215) 575-7000

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 constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and (i) all prior negotiations and understandings between the Parties will be deemed superseded by this Settlement Agreement and (ii) all contemporaneous negotiations and understandings between the Parties 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' 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.** Plaintiff agrees that he will not publicize the negotiations with respect to the Settlement Agreement. Nothing in this Settlement Agreement shall prohibit Plaintiff from disclosing information concerning payments made to him to members of his immediate family and tax advisors. 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, or prohibit or restrict Plaintiff from responding to any inquiry about this Settlement or its underlying facts and circumstances from any governmental agency.

8.17 Press Releases. The Parties and their counsel will refrain from any individual or unilateral public comment about this Settlement Agreement. The Parties agree that they will issue a joint statement to the press/media. Should the Parties not agree to a joint statement, and one of the Parties or their counsel are contacted by the media, they will merely inform them that the case has been resolved to the satisfaction of all Parties.

DATED: _____ FORT WASHINGTON, PA (#693), LLC

By: _____

Title: _____

DATED: _____ NORRISTOWN, PA (#897), LLC

By: _____

Title: _____

DATED: _____
_____ KHALED KEZBARI

DATED: _____
_____ Marjorie Obod on behalf of DILWORTH
PAXSON LLP as Defendants' Counsel

DATED: _____

CHRISTOPHER WALTER

CONNOLLY WELLS & GRAY, LLP as Class
Counsel

By: _____
Gerald D. Wells, III

KALIKHMAN & RAYZ, LLC as Class Counsel

By: _____
Eric Rayz