

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

**CASE NO.: 22-cv-62082-HUNT**

**[CONSENT CASE]**

ZEPHANEAH RENTON, on behalf of  
herself and all others similarly situated,

Plaintiffs,

v.

5<sup>th</sup> BITE OF THE APPLE LLC,

Defendant.

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**STIPULATED CLASS ACTION SETTLEMENT AGREEMENT**

This Stipulation of Class Action Settlement is entered into by and among Plaintiff, ZEPHANEAH RENTON (“Plaintiff” or “Renton”), for herself individually and on behalf of the Settlement Class, and Defendant, 5<sup>th</sup> BITE OF THE APPLE LLC (“Defendant”) (Plaintiff and Defendant are referred to collectively as the “Parties”). This Settlement Agreement is intended by the Parties to be fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

**RECITALS**

1. On November 9, 2022, Plaintiff, Renton, filed a putative class action against her former employer, seeking damages under the Florida Minimum Wage Act (“FMWA”). Plaintiff also sought damages for violations of the Fair Labor Standards Act (“FLSA”). The claims related to various wage violations allegedly committed by 5<sup>th</sup> Bite of the Apple LLC d/b/a Black Rock Bar & Grill in Fort Lauderdale, Florida. The action was assigned case number 0:22-cv-62082-RKA and assigned to Hon. Roy Altman.

2. The Parties have explored settlement and after a series of depositions, motion practice, and document production, agreed that a full and final class settlement, pursuant to Fed. R. Civ. P. 23, was in the best interests of the Parties. The Parties attended a Settlement Conference with the Hon. Patrick Hunt, which was held on February 2, 2023, via Zoom Teleconference. After the Settlement Conference reached an impasse, the case proceeded through discovery and Plaintiff gained additional information about the estimated size of the putative class. On March 14, 2023,

Defendant deposed Renton. On March 17, 2023, Class Counsel deposed the Defendant's designated corporate representative. Following the corporate representative's deposition, while the class certification motion was pending, the Parties began to extensively negotiate a class-wide resolution and engaged in hours-long discussions concerning the size, scope, and structure of the class settlement. These negotiations spanned several days, and material terms were reached by the Parties on March 20, 2023. A Joint Notice of Class Settlement was filed with the Court on March 21, 2023. The Parties contemporaneously filed a Consent to Proceed Before U.S. Magistrate Judge and have agreed that the Hon. Patrick Hunt will preside over the conclusion of this case.

3. Plaintiff and Class Counsel conducted a comprehensive examination of the law and facts relating to the allegations in the Action and Defendant's potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that they would have ultimately succeeded in obtaining adversarial certification of the proposed Settlement Class, and that they would have prevailed on the merits at class certification, and summary judgment or at trial. However, Plaintiff and Class Counsel recognize that Defendant has raised factual and legal defenses in the Action that presented a significant risk that Plaintiff would not prevail and/or that a class would not be certified for trial. Class Counsel have also taken into consideration the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation. Plaintiff and Class Counsel believe that this Agreement presents an exceptional result for the Settlement Class, and one that will be provided to the Settlement Class without delay. Plaintiff and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and based on good faith negotiations, and in the best interests of Plaintiff and the Settlement Class. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement.

4. Defendant expressly denies the material allegations in the Action, as well as all allegations of wrongdoing and liability, including that it is subject to or violated the FLSA or FMWA, and believe that they would have prevailed on the merits and that a class would not be certified for trial. Nevertheless, Defendant has similarly concluded that this settlement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Class's claims for liquidated damages under the FMWA. Defendant thus desires

to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Class, and Defendant that, subject to the approval of the Court after a hearing as provided for in this Settlement Agreement, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

### AGREEMENT

#### **I. DEFINITIONS**

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

- 1.1 **“Action”** means the case captioned *Renton, et. al. v. 5<sup>th</sup> Bite of the Apple LLC d/b/a Black Rock Bar & Grill Ft. Lauderdale*, S.D. Fla. Case No. 0:22-cv-62082-HUNT.
- 1.2 **“BLACK ROCK”** or **“5<sup>th</sup> BITE”** or **“Defendant”** means 5<sup>th</sup> Bite of the Apple LLC d/b/a Black Rock Bar & Grill Ft. Lauderdale, a Florida limited liability company.
- 1.3 **“Agreement”** or **“Settlement Agreement”** means this Stipulation of Class Action Settlement and the attached Exhibits.
- 1.4 **“Approved Claim”** means a Claim Form submitted by a Settlement Class Member that is (a) timely submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is fully completed and physically signed or electronically signed by the Settlement Class Member; and (c) satisfies the conditions of eligibility for a Settlement Payment as set forth in this Agreement.
- 1.5 **“Claims Deadline”** means the date by which all Claim Forms must be postmarked or submitted on the Settlement Website to be considered timely, and shall be set as a date no later than sixty (60) calendar days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.
- 1.6 **“Claim Form and Release”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, which shall be

completed by Settlement Class Members who wish to file a claim for a Settlement Payment, shall be available in paper and electronic format. The Claim Form will require claiming Settlement Class Members to provide the following information: (i) full name; (ii) current U.S. Mail address; (iii) current contact telephone number and e-mail address; and (iv) a statement that he or she worked for Black Rock in Fort Lauderdale, Florida, between May 26, 2020, and the date of the Preliminary Approval Order. The Claim Form will not require notarization, but will require affirmation that the information supplied is true and correct.

- 1.7 **“Class Counsel”** means attorney Jordan Richards of USA Employment Lawyers – Jordan Richards PLLC.
- 1.8 **“Class Representative”** means the named Plaintiff in the Action, Zephaneah Renton.
- 1.9 **“Court”** means the United States District Court for the Southern District of Florida, the Honorable Patrick Hunt presiding, or any judge who shall succeed him as the Judge assigned to the Action.
- 1.10 **“Defendant’s Counsel”** means attorneys Scott Bassman and Matthew Green of Cole, Scott & Kissane LLP.
- 1.11 **“Effective Date”** means one business day following the later of: (a) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings rising out of the appeal(s) including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on appeal with respect to the Final Approval Order.
- 1.12 **“Escrow Account”** means the separate, qualified interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class

Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation for the purposes of holding the Settlement Fund.

- 1.13 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of costs awarded to Class Counsel by the Court, which shall be paid out of the Settlement Fund.
- 1.14 **“Final Approval Hearing”** means the hearing before the Court where Plaintiff will request that the Final Approval Order be entered by the Court finally approving the Settlement as fair, reasonable, adequate, and made in good faith, and approving the Fee Award. If required by orders of the Court, the Final Approval Hearing may be held by telephone or videoconference.
- 1.15 **“Final Approval Order”** means the final approval order to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing, and dismissing the Action with prejudice. A proposed version of the Final Approval Order shall be submitted to the Court in the form attached hereto as Exhibit B.
- 1.16 **“Individual Settlement of Non-FMWA Claims”** means the proposed amount of fifteen thousand dollars (\$15,000.00) to be paid to the Class Representative, Renton, as consideration for non-FMWA employment-related claims on an individual basis (\$5,000.00 to represent unliquidated damages; \$5,000.00 to represent liquidated damages), and in exchange for a mutual release of employment-related claims (\$5,000.00), and to be approved at the Final Approval Hearing.
- 1.17 **“Notice”** means the notice of the proposed Settlement and Final Approval Hearing approved by the Court, which is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, fulfills the requirements of Due Process and Fed. R. Civ. P. 23, and is substantially in the form of Exhibits C, D, E, and F attached hereto.
- 1.18 **“Notice Date”** means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of the Preliminary Approval Order.

- 1.19 **“Objection/Exclusion Deadline”** means the date by which a written objection to the Settlement Agreement or a request for exclusion from the Settlement Class submitted by a person within the Settlement Class must be filed with the Court and/or postmarked or e-mailed (for exclusion requests), which shall be designated as a date approximately sixty (60) days after the Notice Date, as approved by the Court. The Objection/Exclusion Deadline will be set forth in the Notice and on the Settlement Website.
- 1.20 **“Plaintiff”** means Zephaneah Renton.
- 1.21 **“Preliminary Approval Order”** means the Court’s order preliminarily approving the Agreement, preliminarily certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice. A proposed version of the Preliminary Approval Order shall be submitted to the Court in the form attached hereto as Exhibit G.
- 1.22 **“Released Claims”** means any and all actual, potential, filed, unfiled, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, damages, punitive, exemplary or multiplied damages, expenses, costs, attorneys’ fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the Florida Minimum Wage Act or other state, local, statutory or common law or any other law, against the Released Parties, or any of them, arising out of relating to actual or alleged facts, transactions, events, matters, occurrences, acts, disclosures, statements, representations, omissions or failures to act regarding the payment or non-payment of Florida minimum wages, including all claims that were brought or could have been brought in the Action, belonging to any and all Releasing Parties.
- 1.23 **“Released Parties”** means 5<sup>th</sup> BITE OF THE APPLE LLC, and its past, present and future, direct and indirect heirs, assigns, associates, corporations, investors, owners, parents, subsidiaries, affiliates, divisions, officers, directors, shareholders, consultants, agents, employees, supervisors, representatives, attorneys, insurers (including current and former agents), reinsurers (including current and former agents), benefit plans, predecessors, successors, managers, administrators, executors and trustees.

1.24. **“Releasing Parties”** means Plaintiff and other Settlement Class Members and their respective past, present and future heirs, children, spouses, beneficiaries, conservators, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.25 **“Settlement”** means the final resolution of the Action as embodied by the terms and conditions of this Agreement.

1.26 **“Settlement Administration Expenses”** means the expenses incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice, processing Claim Forms, mailing checks for Settlement Payments, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.27 **“Settlement Administrator”** means ILYM Group, Inc., subject to approval of the Court, which will provide the Notice, Settlement Website, processing Claim Forms, sending of Settlement Payments to Settlement Class Members, tax reporting, and performing such other settlement administration matters set forth herein or contemplated by the Settlement.

1.28 **“Settlement Class”** means all individuals who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class. Excluded from the Settlement Class are: (1) any Judge or Magistrate presiding over this Action and members of their families; (2) the Defendant, Defendant’s subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest; (3) persons who properly execute and file a timely request for exclusion from the Settlement Class; and (4) the legal representatives, successors or assigns of any such excluded person.

1.29 **“Settlement Class Member”** or **“Class Member”** means a person who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

1.30 **“Settlement Fund”** means the total amount of One Hundred Thousand Dollars (\$100,000.00) to be paid by Defendant pursuant to the terms of this Settlement. Under no circumstances shall Defendant be required to provide settlement funding or pay any attorneys’ fees, costs, incentive awards, or Settlement Administration Expenses that, taken together, exceed \$100,000.00. Within thirty (30) calendar days of the entry of the Preliminary Approval Order,

Defendant, their insurer(s), or any other party on behalf of Defendant, shall transmit the sum of \$50,000.00 to the Escrow Account established by the Settlement Administrator for the purpose of funding the Settlement Administration Expenses and Class Fund. Within thirty (30) calendar days of the entry of the Final Approval Order, Defendant, their insurer(s), or any other party on behalf of Defendant, shall transmit the remaining sum of \$50,000.00 to the Escrow Account established by the Settlement Administrator for purposes of funding the Settlement Administration Expenses and Class Fund. The Settlement Fund shall satisfy all monetary obligations of Defendant (or any other Released Party) under this Settlement Agreement, including the Settlement Payments, Settlement Administration Expenses, Individual Non-FMWA Award, Fee Award, taxes, and other payments or other monetary obligations contemplated by this Agreement or the Settlement.

1.31 **“Settlement Payment”** means the check that each Settlement class Member with an Approved Claim will receive, the amount of which will be based upon their total hours worked as a server or bartender for 5<sup>th</sup> Bite of the Apple LLC in Fort Lauderdale, Florida, between May 26, 2020, and the date of the Preliminary Approval Order. These Settlement Payments will be a portion of the Settlement Fund, after deduction of any Fee Award, payment to the Class Representative for non-FMWA consideration, and Settlement Administration Expenses, The calculation formula for payments will be as follows: each Settlement Class Member with an Approved Claim will receive \$0.36 per hour for any work performed within the class period, with a maximum of 77,132 hours being paid for work performed between May 26, 2020, and the date of the Preliminary Approval Order.

1.32 **“Settlement Website”** means the website to be created, launched, and maintained by the Settlement Administrator, which will provide access to relevant settlement administration documents, including the Notice, relevant court filings, and the ability to submit Claim Forms online. The Settlement Website shall be live and active by the Notice Date, and the URL of the Settlement Website shall be FLLSettlementBlackRock.com, or such other URL as the Parties may subsequently agree to.

## **II. SETTLEMENT RELIEF**

### **2.1 Settlement Payments to Settlement Class Members**

a. Settlement Class Members shall have until the Claims Deadline to submit Claim Forms. Each Settlement Class Member who submits and Approved Claim shall be entitled



to a Settlement Payment. The Settlement Administrator shall send such Settlement Payments via First Class U.S. Mail to the address provided on the Approved Claim Form.

b. Within ten (10) calendar days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Class Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may request additional information prior to initially accepting or rejecting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud.

c. Within ten (10) days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Parties a report listing all initially approved and initially rejected Claims.

d. Counsel for the Parties shall have ten (10) days after the date they receive the report listing the initially approved and initially rejected claims to audit and challenge any initially approved or initially rejected claims. Counsel for the Parties shall meet and confer in an effort to resolve any disputes or disagreements over any initially approved or rejected claims. The Settlement Administrator shall have sole and final authority for determining if Settlement Class Members' Claim Forms are complete, timely, and accepted as Approved Claims.

e. The Settlement Administrator shall send each Settlement Class Member with an Approved Claim two separate Settlement Payments by check. The First Settlement Payment shall be sent within thirty (30) calendar days of the Effective Date. The Second Settlement Payment shall be sent within ninety (90) calendar days of the Effective Date. All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) calendar days after the date of issuance.

f. To the extent that a check issued to Settlement Class Members is not cashed within ninety (90) days after the date of issuance, the check will be void. Uncashed checks will be voided by Defendants after ninety (90) days of issuance and any and all such funds shall revert back to Defendants.

g. Settlement Class Members may request replacement checks within the ninety (90) day period after initial issuance, but such checks will not extend the ninety (90) day check cashing period from the date checks were originally issued.

h. Following the expiration of the Claims Period and issuance of payment, and after payment of any outstanding Settlement Administration Expenses, any unclaimed or leftover amounts in the Escrow Account, including but not limited to any amounts that were allocated to individuals in the Settlement Class who submitted valid requests for exclusion from the Settlement Class, Settlement Class Members without Approved Claims or any amounts stemming from uncashed checks issued to Settlement Class Members, shall revert back to Defendants. The reversion of any outstanding funds remaining shall be released to Defendants via their counsel within 30 calendar days following the expiration of the ninety (90) day period addressed above.

### **III. RELEASE**

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished and completely discharged the Released Parties from any and all Released Claims.

### **IV. NOTICE TO CLASS; RIGHTS TO OBJECT OR REQUEST EXCLUSION**

4.1 **Class List.** Defendant shall provide the information in Defendant's possession, custody, or control, regarding the names, e-mail addresses (if available), U.S. Mail addressees (if available) and Social Security Numbers (if available) of the individuals in the Settlement Class to the Settlement Administrator as soon as practicable, but by no later than fourteen (14) calendar days after entry of the Preliminary Approval Order. In addition, Defendant shall provide each individual's total hours worked as a server or bartender for 5<sup>th</sup> Bite of the Apple LLC at Black Rock Bar & Grill in Fort Lauderdale, Florida between May 26, 2020, and the date of the Preliminary Approval Order to the Settlement Administrator.

4.2 **Methods and Form of Notice.** The Notice shall include the best notice practicable, including but not limited to:

a. *Direct Notice.* The Settlement Administrator shall send Notice via e-mail substantially in the form attached as Exhibit C to all persons in the Settlement Class for whom an e-mail address is available on the Class List no later than the Notice Date. If no e-mail address is available for a person in the Settlement Class, the Settlement Administrator shall, no later than the Notice Date, send a postcard via First Class U.S. Mail substantially in the form attached as Exhibit D, to each physical address in the Class List.

b. *Internet Notice.* The Settlement Administrator will develop, host, administer and maintain a Settlement Website containing the notice substantially in the form of Exhibit E attached hereto no later than the Notice Date.

**4.3 Right to Object or Comment.** Any person in the Settlement Class who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Class Members' full name and current address; (b) a statement why he or she believes himself or herself to be a member of the Settlement Class including the dates during which the individual was employed by Defendant; (c) the specific grounds for the objection; (d) all documents or writings that the Settlement Class Member desires the Court to consider; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission). All written objections must be filed with the Court and e-mailed to Class Counsel and Defendant's Counsel no later than the Objection/Exclusion Deadline. Any person in the Settlement Class who fails to timely file an objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Settlement Agreement or the Final Approval Order by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

**4.4 Right to Request Exclusion.** Any person in the Settlement Class may submit a request for exclusion from the Settlement on or before the Objection/Exclusion Deadline. To be valid, any request for exclusion must: (a) be in writing; (b) identify the case name *Renton, et. al. v. 5<sup>th</sup> Bite of the Apple LLC*, S.D. Fla. Case No. 0:22-cv-62082-HUNT; (c) state the full name and current address of the person in the Settlement Class seeking exclusion; (d) be signed by the person(s) seeking exclusion; and (e) be postmarked or received by the Settlement Administrator on or before the Objection/Exclusion Deadline. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class

in *Renton, et. al. v. 5<sup>th</sup> Bite of the Apple LLC*, S.D. Fla. Case No. 0:22-cv-62082-HUNT.” A request for exclusion that does not include all of the foregoing information, that is sent to an address or e-mail address other than that designated in the Notice, or that is not postmarked or electronically delivered to the Settlement Administrator within the time specified, shall be invalid and the persons serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. Any person who elects to request exclusion from the Settlement Class shall not (a) be bound by any orders or the Final Approval Order entered in this Action; (b) receive a Settlement Payment under this Settlement Agreement; (c) gain any rights by virtue of this Settlement Agreement; or (d) be entitled to object to any aspect of this Settlement Agreement or the Final Approval Order. No person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

## **V. SETTLEMENT ADMINISTRATION**

### **5.1 Settlement Administrator’s Duties.**

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate Notice as provided in Section 4 of this Settlement Agreement. If a Notice is returned with a forwarding address, the Settlement Administrator shall promptly mail a new Notice to the forwarding address. If a Class Notice is returned without a forward address, the Settlement Administrator shall promptly seek to determine the individual’s current address (including by performing, if needed, a standard Level 2 Skip Trace in the manner that the Settlement Administrator customarily performs skip traces, and, to facilitate this process, the Settlement Administrator may use the individual’s social security number, if available). If a new address is not obtained through a standard Level 2 skip tracing (or any other reasonable or customary methods available to the Settlement Administrator, such as telephoning or emailing the individual), no further effort need be taken.

b. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Class Counsel and Defendant’s Counsel upon request, except that Plaintiff and Class Counsel shall not have access to the information provided by Defendant regarding Settlement Class Members other than as authorized in this Agreement. Neither Plaintiff nor Class Counsel shall use the Claim Forms, or any

information contained in the Claim Forms, for any purpose other than those specifically set forth in Section 2.1 above, and shall not disclose the Claim Forms, or any information contained in the Claims Forms, to any other person or entity. Nothing in the foregoing shall be construed to create a duty or obligation that would be ethically impermissible under the Florida Rules of Professional Conduct promulgated by the Florida Supreme Court. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide bi-weekly reports to Class Counsel and Defendant's Counsel with information concerning Notice, number of Claim Forms submitted, number of Approved Claims, requests for exclusion, and administration and implement of the Settlement.

c. *Receipt of Requests for Exclusion.* The Settlement Administrator shall receive requests for exclusion from persons in the Settlement Class and provide to Class Counsel and Defendant's Counsel a copy therefore within five (5) calendar days of the Objection/Exclusion Deadline. If the Settlement Administrator receives any requests for exclusion or other requests from Settlement Class Members after the deadline for the submission of requests for exclusion, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel.

d. *Creation of Settlement Website.* The Settlement Administrator shall create the Settlement Website and utilize the URL [www.FLLSettlementBlackRock.com](http://www.FLLSettlementBlackRock.com).

e. *Timing of Settlement Payments.* The Settlement Administrator shall make the Settlement Payments contemplated in Section 2 of this Settlement Agreement by check and mail the First Settlement Payment to Settlement Class Members with Approved Claims within thirty (30) calendar days after the Effective Date. The Settlement Administrator shall mail the Second Settlement Payment to Settlement Class Members with Approved Claims within ninety (90) calendar days after the Effective Date.

## **VI. PRELIMINARY APPROVAL AND FINAL APPROVAL**

6.1 **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Class Counsel shall prepare an *Agreed Motion* for Preliminary Approval of Class Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiff's Counsel as Class Counsel, and Approval of the Proposed Notice of Settlement and Class Action Settlement Procedure and Memorandum of Law in Support. Plaintiff shall also submit this Settlement

Agreement to the Court and move the Court to enter the Preliminary Approval Order, which shall include, among other provisions, a request that the Court:

- a. Appoint Plaintiff as Class Representative of the Settlement Class for settlement purposes only;
- b. Appoint Class Counsel to represent the Settlement Class;
- c. Preliminarily certifying the Settlement Class under Fed. R. Civ. P. 23 for settlement purposes only;
- d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Class;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Class; and
- f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness, and adequacy, to consider the application for a Fee Award, and to consider whether the Court shall issue a Final Approval Order approving this Settlement Agreement and dismissing the Action with prejudice.

**6.2 Final Approval.** After Notice to the Settlement Class is given, Class Counsel shall move the Court for entry of a Final Approval Order, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;
- b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Class Members; make a finding that the Agreement was entered into in good faith, and direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;
- c. find that the Notice implemented pursuant to the Settlement Agreement: (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (4) fulfills the requirements of Due Process and Fed. R. Civ. P. 23;

d. find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

e. dismiss the Action on the merits with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

f. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

g. permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any lawsuit or other action in any jurisdiction based on the Released Claims;

h. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Approval Order; and (ii) do not limit the rights of Settlement Class Members;

i. without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of this Settlement Agreement and the Final Approval Order, and for any other necessary purpose; and

j. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

6.3 **Cooperation.** The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

## **VII. TERMINATION OF THE SETTLEMENT AGREEMENT & CONFIRMATORY DISCOVERY**

7.1 **Termination.** Subject to Section 9 below, the Class Representative, on behalf of the Settlement Class, or Defendants, shall have the right to terminate this Agreement by providing written notice of the election to do so to Class Counsel or Defendant's Counsel within ten (10) days of any of the following events: (i) the Court's refusal to enter the Preliminary Approval Order approving of this Agreement in any material respect; (ii) the Court's refusal to enter the Final

Approval Order in this Action in any material respect; (iii) the date upon which the Final Approval Order is modified or reversed in any material respect by the appellate court or the Supreme Court; or (iv) the date upon which an Alternative Approval Order is entered, as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court.

**7.2 Confirmatory Discovery.** The Parties shall proceed with confirmatory discovery, prior to Preliminary Approval, sufficient to confirm the basis and reasonableness of the estimates that Defendant provided to Plaintiff regarding the number of Servers and Bartenders they employed from May 26, 2020, through the present. In the event that there are any disputes that arise from such confirmatory discovery, the Parties shall request that the Court appoint a Magistrate Judge to assist in resolving such disputes. In the event that, notwithstanding the assistance of Magistrate Judge, the Parties are unable to resolve any disputes arising from confirmatory discovery, this Agreement may be terminated or amended in accordance with Section 9.2.

**7.3 Court Approval.** This Settlement Agreement is contingent upon the Court's approval. If the Court does not grant preliminary or final approval of any of the terms in this Settlement Agreement or the Effective Date does not occur, this Settlement Agreement may be voided at any Party's option, in which case this Settlement Agreement will become null and void, and shall not be used for any purpose, including without limitation, in connection with the Action or any other lawsuit, administrative, or other legal proceeding, claim, investigation, or complaint. In such an event, the Parties shall resume the Action. The Parties shall meet and confer in good faith either in person or remotely, over a period of no less than fifteen (15) calendar days, regarding potential alternative solutions before any party voids this Settlement Agreement. In the event this Settlement Agreement is so voided, the Action will proceed as if no settlement had been attempted. In that event, Defendants shall retain the right to assert all applicable defenses and challenge all claims and allegations, including, but not limited to, contesting whether the Action should be maintained as class or collective action and otherwise contesting the merits of the claims being asserted by the Plaintiff in the Action.

**VIII. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND ADDITIONAL CONSIDERATION FOR CLASS REPRESENTATIVE**



8.1 Defendant agrees to pay Class Counsel reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award, which shall be paid from the Settlement Fund. The amount of the Fee Award shall be determined by the Court based on petition from Class Counsel. Class Counsel has agreed, with no consideration from Defendant, to limit their request for attorneys' fees and unreimbursed costs to fifty thousand dollars (\$50,000.00). Defendant agrees to not challenge the amount requested. Class Counsel shall also be permitted to receive recovery of \$1,500.00 in reimbursable costs in addition to the attorney's fees. Payment of the Fee Award and Costs shall be made from the Settlement Fund and should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments.

8.2 The Fee Award and Costs shall be payable in two (2) equal payments. The First Payment for the Fee Award and Costs shall be delivered to Class Counsel within fourteen (14) calendar days after the Effective Date. The Second Payment for the Fee Award and Costs shall be delivered to Class Counsel within forty-five (45) calendar days after the Effective Date. Both payments of the Fee Award and Costs shall be made via check made payable to Jordan Richards PLLC after providing necessary relevant tax information. The payment shall be delivered via UPS or Federal Express to: Jordan Richards PLLC, Attn: Jordan Richards, Esq., 1800 SE 10<sup>th</sup> Ave. Suite 205 Fort Lauderdale, Florida 33316.

8.3 Defendant agrees that Class Representative, Renton, will be paid separate and additional consideration in the amount of Fifteen Thousand Dollars (\$15,000.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement to represent consideration to resolve Renton's individual FLSA claims, and in consideration for a release limited to Renton's employment-related claims. Should the Court approve less than this amount to be awarded to Renton for her individual FLSA claims, the difference in the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Class Members as Settlement Payments. Any award pursuant to this section shall be paid from the Settlement Fund (in the form of a check made payable to Zephaneah Renton that is sent care of Class Counsel), in two (2) equal payments. The First Payment to Renton shall be made within fourteen (14) calendar days after the Effective Date.

The Second Payment to Renton shall be made within forty-five (45) calendar days after the Effective Date.

**IX. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.11:

(a) This Agreement has been signed by the Parties, Class Counsel, and Defendant's Counsel;

(b) The Court has entered the Preliminary Approval Order approving the Agreement;

(c) The Court has entered an order finally approving the Agreement, following Notice to the Settlement Class and a Final Approval Hearing, and has entered the Final Approval Order, or a judgment materially identical to the Final Approval Order, and such order or judgment has become final and unappealable; and

(d) In the event the Court enters an approval order and final judgment in a form other than that provided above ("Alternative Approval Order") to which the Parties have consented, that Alternative Approval Order has become final and unappealable.

9.2 If some of all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9.4, unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Class Counsel set forth above or the Incentive Award to the Class Representative, regardless of the amounts awarded, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in this Action as

of the date of the signing of this Agreement. In such event, any Final Approval Order or other order entered by the Court in accordance with the terms of this Agreement, including, but not limited to, class certification, shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

#### **X. MISCELLANEOUS PROVISIONS**

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with one another in seeking entry of the Preliminary Approval Order and the Final Approval order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein; (b) that the execution, delivery, and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory; and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the other Settlement Class Members, and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiff or defended by Defendant, or each or any of them, in bad faith or without a reasonable basis.

10.4 The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

10.5 Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant risks, inconveniences, expenses and contingencies. Accordingly, whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the appropriateness of class certification, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement Fund, Settlement Payment or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released parties, or any of them;

b. is, may be deemed, or shall be used, offered or received against Defendant as, an admission, concession or evidence of any fault, misrepresentation or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered or received against Plaintiffs or the Settlement Class, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in this Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

d. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released parties, in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against such parties;

e. is, may be deemed, or shall be construed against Plaintiff and the Settlement Class, or each or any of them, or against the Released parties, or each or any of them, as an admission or concession that the consideration to be given represents an amount equal to, less than or greater than the amount that could have or would have been recovered after trial; and

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Class, or each and any of them, or against the Released parties, or each or any of them, that any of Plaintiff's claims are with, or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.6 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.7 The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

10.8 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are expressly and fully incorporated herein by reference.

10.9 This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.10 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.11 Plaintiff represents and warrants that he has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that he is fully entitled to release the same.

10.12 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.13 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.14 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to the conflicts of laws provisions thereof.

10.15 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of good-faith, arm's-length negotiations among the Parties. Whereas all parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

10.16 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Jordan Richards, Esq., [jordan@jordanrichardspllc.com](mailto:jordan@jordanrichardspllc.com), USA Employment Lawyers, 1800 SE 10<sup>th</sup> Ave. Suite 205, Fort Lauderdale, Florida, 33316; Matthew Green, Esq., [matthew.green@csklegal.com](mailto:matthew.green@csklegal.com), Cole, Scott & Kissane LLP, 110 S.E. 6<sup>th</sup> Street, Suite 2700, Fort Lauderdale, Florida 33316.


Dated: May 8, 2023

**ZEPHANEAH RENTON**

By (signature):   
Name (printed): Zephaneah Renton  
*Plaintiff*


Dated: May 8, 2023

**JORDAN RICHARDS PLLC**

By (signature):   
Name (printed): Jordan Richards  
*Class Counsel*

Dated: 5/9/23

**5<sup>th</sup> BITE OF THE APPLE LLC**

By (signature):   
Name (printed): Bradley Gasser  
*Defendant*