

## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 20<sup>th</sup> day of March, 2024, by and among defendants Jackson Hewitt Inc. and Tax Services of America, Inc., and plaintiffs Jessica Robinson, Stacey Jennings, and Priscilla McGowan, individually and as representatives of a class of Defendants' employees in *Robinson, et al. v. Jackson Hewitt Inc., et al.*, Case No. 2:19-cv-9066(MEF)(JRA), currently pending before the Honorable Judge Michael E. Farbiarz in the United States District Court for the District of New Jersey. Plaintiffs enter into this Settlement Agreement both individually and on behalf of the Settlement Class, as defined below. This Settlement Agreement is intended by Defendants and Plaintiffs to fully, finally, and forever compromise, release, resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof and subject to the approval of the Court.

**WHEREAS**, Plaintiffs allege, among other things, that Defendants entered into unlawful agreements to eliminate competition among them for skilled labor, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

**WHEREAS**, Defendants deny each and all of Plaintiffs' claims and allegations of wrongdoing arising out of any of the conduct, statements, acts or omissions alleged in the Action; have not conceded or admitted any liability in this Action, or that they violated any duty owed to Plaintiffs or the Settlement Class; further deny the allegations that Plaintiffs or any member of the Settlement Class were harmed by any conduct by Defendants alleged in the Action or otherwise; have asserted defenses to each of Plaintiffs' claims; and intend to continue with a vigorous defense of this Action if this Settlement is not approved by the Court;

**WHEREAS**, Plaintiffs and Defendants have engaged in extensive discovery regarding the facts pertaining to the Settlement Class's claims and Defendants' defenses;

**WHEREAS**, Plaintiffs and Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations alleged in the Action;

**WHEREAS**, Plaintiffs have thoroughly analyzed the facts and the law regarding the Action and have concluded that a settlement with Defendants according to the terms set forth below is fair, adequate, reasonable, and in the best interest of Plaintiffs and the Settlement Class;

**WHEREAS**, despite their belief that they are not liable for the claims asserted against them in the Action and that they have strong defenses thereto, Defendants have decided to enter into this Settlement Agreement to avoid the expense, inconvenience, and distraction of burdensome and protracted further litigation, and thereby to put to rest this controversy with respect to the Settlement Class and avoid the risks inherent in complex litigation;

**WHEREAS**, arm's-length settlement negotiations have taken place between Class Counsel and Defendants' Counsel, including through mediation, and this Settlement Agreement, together with the Escrow Agreement, embodies all the terms and conditions of the settlement between the Defendants and Plaintiffs, both individually and on behalf of the Settlement Class;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among the Settling Parties, by and through their undersigned attorneys of record, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, that the claims of Plaintiffs and the Settlement Class be finally and fully settled, compromised, released, and dismissed on the merits and with prejudice as to Defendants and the Releasees, without costs, upon and subject to the approval of the Court, following notice to the Settlement Class, on the following terms and conditions:

## **Definitions**

The following terms, as used in any part of this Settlement Agreement, shall have the following meanings:

- a. “Action” means the action captioned *Robinson, et al. v. Jackson Hewitt Inc., et al.*, Case No. 2:19-cv-9066(MEF)(JRA), pending in the United States District Court for the District of New Jersey.
- b. “Affiliates” means entities controlling, controlled by or under common control with another entity.
- c. “Class Counsel” refers to Lite DePalma Greenberg & Afanador, LLC, Hartley LLP, Paul LLP, Joseph Saveri Law Firm, LLP, Gustafson Gluek PLLC, Freed Kanner London & Millen LLC, and Ahdoot & Wolfson, PC.
- d. “Class Period” means the period beginning December 20, 2014, through and including the date the Preliminary Approval Order is entered.
- e. “Class Representatives” refers to plaintiffs Jessica Robinson, Stacey Jennings, and Priscilla McGowan.
- f. “Complaint” means the operative Fourth Amended Consolidated Class Action Complaint, filed in this Action on November 1, 2021, ECF No. 161.
- g. “Court” or “District Court” means the United States District Court for the District of New Jersey.
- h. “Defendants” means Jackson Hewitt Inc. and Tax Services of America, Inc.
- i. “Defendants’ Counsel” means Quarles & Brady LLP and Ansa Assuncao LLP.

j. “Effective Date” means the first date after all of the following events and conditions have been met or have occurred:

i. All Settling Parties have executed this Settlement Agreement;

ii. The Court has entered an order granting final approval of this Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and entered Final Judgment dismissing this Action with prejudice as to the Defendants; and

iii. The time for any person with standing to appeal or to seek permission to appeal from the Court’s approval of this Settlement Agreement and entry of Final Judgment as to the Defendants has expired, or, if appealed, the Court’s approval of this Agreement and the Final Judgment as to the Defendants have been affirmed or undisturbed in their entirety by the court to which such appeal is taken and such affirmance has become no longer subject to further appeal or review; provided, however, a modification or reversal on appeal of any Fee and Cost Amount awarded by the Court or the Plan of Allocation approved by the Court shall not be deemed a modification of all or part of the terms of this Settlement Agreement or the Final Judgment. Neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

k. “Escrow Account” means that escrow account to be established with a bank or trust company pursuant to the terms and conditions of the Escrow Agreement.

l. “Escrow Agent” means the bank or trust company that agrees to establish and maintain the Escrow Account pursuant to the terms of the Escrow Agreement.

m. “Escrow Agreement” means an escrow agreement in a form mutually satisfactory to the Settlement Class and Defendants.

n. “Fee and Cost Amount” means an amount to be sought by Class Counsel to provide payment of their reasonable attorneys’ fees, reimbursement of their costs (including all costs related to settlement administration and notice to the Settlement Class), and payment of incentive awards to the Class Representatives.

o. “Final Judgment” means a final order approving the Settlement Agreement under Federal Rule of Civil Procedure 23(e) and dismissing the Action and all claims therein against Defendants with prejudice as to all Settlement Class Members, together with entry of a final judgment sufficient under Rule 58 of the Federal Rules of Civil Procedure. Notwithstanding the foregoing, the Settling Parties agree that the Court's determination of the Fee and Cost Amount, or modifications to any amounts of individual payments shall not affect whether a judgment or other order is deemed a Final Judgment.

p. “IRS” means the United States Internal Revenue Service

q. “Person” means an individual or an entity.

r. “Released Claims” means those claims released pursuant to Paragraphs 11-16 of this Settlement Agreement.

s. “Releasees” refers to Defendants and to all of their respective past and present, direct and indirect, parent companies, subsidiaries, joint ventures, and Affiliates, including, but not limited to the predecessors, successors, and assigns of any Releasee; and each and all of the present and former principals, partners, members, officers, directors, employees,

representatives, insurers, attorneys, shareholders, heirs, executors, administrators, agents, and assigns of each of the foregoing. Each of the Releasees shall have the full benefits of this Settlement Agreement, including, without limitation, those benefits set forth in Paragraphs 11-16 of this Settlement Agreement, even though the specific name of each of the Releasees is not set forth herein.

t. “Releasers” refers jointly and severally, individually and collectively to each of the Plaintiffs and the Settlement Class Members, and to their respective past and present officers, directors, employees, agents, shareholders, attorneys, servants, representatives, parent companies, subsidiaries, Affiliates, partners, insurers, receivers, and bankruptcy trustees and the predecessors, successors, heirs, executors, executives, administrators, beneficiaries, estates, and assigns of any of the foregoing.

u. “Settlement Administrator” means the entity approved by the Court to administer the Settlement Agreement according to its terms under the supervision of Class Counsel. Plaintiffs shall select the Settlement Administrator, subject to approval of the Court

v. “Settlement Fund Amount” means ten million, eight hundred thousand dollars (\$10,800,000.00) payable in lawful money of the United States, and any interest earned on amounts held in the Escrow Account.

w. “Settlement Class” means:

All persons who worked in a tax preparer position at any company owned Jackson Hewitt location in the United States at any time during the Class Period.

Excluded from the Settlement Class are: Defendants and their affiliates, the Judge, including the Judge’s staff and immediate family members, senior executives, personnel in Jackson Hewitt’s executive, HR and recruiting departments, persons outside of the United States, franchisee owners, and managers.

x. “Settlement Class Member” means any person who meets the “Settlement Class” definition above and who has not timely and validly opted out of the settlement set forth in this Settlement Agreement.

y. “Settling Parties” means, collectively, Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants.

z. “Taxing Authority” or “Taxing Authorities” means the IRS or any other appropriate taxing authorities.

aa. “Tax Expenses” means any tax payments, including interest and penalties due on income earned by the Settlement Fund Amount.

bb. “Tax Preparer” means a person with the job title “Tax Preparer”, “Tax Preparer I,” “Tax Preparer II,” “Tax Preparer III” or a similar title designating that the employee’s primary job responsibility was the preparation of customer tax returns.

**Approval of this Settlement Agreement, Preliminary Approval, Notice, Final Approval and Judgment, and Dismissal of Claims**

1. ***Best Efforts to Effectuate this Settlement.*** The Settlement Class and Defendants shall use their best efforts to effectuate this Settlement Agreement and obtain a Court order that Defendants are excused from further proceedings in the Action, and shall cooperate in the Settlement Class’s efforts to promptly seek and obtain the Court’s preliminary and final approval of this Settlement Agreement and to secure the prompt, complete, and final dismissal with prejudice of the Action as to Defendants.

2. ***Notice to the Court of Settlement Agreement.*** If not already notified, the Settlement Class and Defendants shall use their best efforts to promptly notify the Court of the fact of this settlement.

3. ***Settlement Class Certification.*** The Settling Parties hereby stipulate for purposes of settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied, and, subject to Court approval, the Settlement Class set forth in Definition w above shall be certified for settlement purposes only. Defendants have not waived and expressly have reserved the right to oppose class certification and seek an appeal under Rule 23(f) of the Federal Rules of Civil Procedure of any order certifying a class other than the Settlement Class. Nothing in this Settlement Agreement may be used in any judicial or administrative proceedings respecting the propriety of class certification other than for purposes of effectuating this Settlement Agreement. The Court's certification of a Settlement Class is not and shall not be deemed to be the adjudication of any fact or issue for any purpose other than the accomplishment of the provisions of this Settlement Agreement, and shall not be considered as law of the case, res judicata, or collateral estoppel in this or any other proceeding unless the Court has entered Final Judgment.

4. ***Motion for Preliminary Approval and Notice to Class.*** As set out in the Parties' February 2, 2024 Joint Letter to the Court (Dkt. 304), the Settlement Class shall submit this Settlement Agreement to the Court by March 18, 2024, with a motion for preliminary approval, requesting entry of an order in form and substance mutually satisfactory to the Settlement Class and Defendants preliminarily approving the settlement, authorizing dissemination of notice to the Settlement Class that includes notice of the opportunity to opt out, and scheduling a fairness hearing for final approval of the settlement (the "Preliminary Approval Motion"). Additionally, Plaintiffs may seek an award of the Fee and Cost Amount.

5. ***Notice.*** The Preliminary Approval Motion shall include the proposed form of, method for, and timetable for disseminating notice to the Settlement Class and ask the Court to



find that the proposed form of and method for dissemination of the notice to the Settlement Class constitutes valid, due and sufficient notice to the Settlement Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. Notice to the Settlement Class will include notice by mail or email to a class list promptly produced by Defendants providing, no later than 15 days after Defendants sign this Settlement Agreement, updated class information, including names, last known email and postal addresses, and dates of employment as a Tax Preparer (including the month that employment began and, if applicable, the month that employment ended), to Class Counsel for Settlement Class Members who currently are, or were formerly, employed by Defendants. To the extent reasonably possible, Defendants agree to provide the class list in the same form previously disclosed by Defendants in the Action based on Defendants' payroll data (e.g., JH-034906 and JH-034902) and Work Assignment Data (JH-095747), except that it shall also include the names, social security number, most recent address, and to the extent known, email address for the employees included on the class list based on the information maintained by Defendants. Class Counsel shall, in accordance with Rule 23(c)(2) of the Federal Rules of Civil Procedure, direct the Settlement Administrator to provide the Settlement Class with Notice as ordered by the Court. Provided Defendants provide the information described above, Settlement Class Members shall have no recourse as to Defendants or Defendants' Counsel with respect to any claims they may have that arise from any failure of the notice process.

6. ***Dissemination of Notice.*** Class Counsel shall propose, and Defendants' Counsel shall not oppose, that the Notice be disseminated through mail and email using a methodology developed by the Settlement Administrator.

7. ***Settlement Administrator.*** The Settlement Class shall retain a Settlement Administrator, which shall, under the direction of Class Counsel, be responsible for the notice administration process, distribution to the Settlement Class, withholding and paying applicable taxes, and other duties as provided herein. Class Counsel shall obtain approval by the Court of the choice of Settlement Administrator. The Settlement Administrator shall sign and be bound by the Protective Order entered in the Action. The fees and expenses of the Settlement Administrator shall be reimbursed out of the Settlement Fund Amount. Defendants shall deposit the amount budgeted by the Settlement Administrator for notice and claims administration in lawful United States money into an escrow account within 15 calendar days of entry of the Court's order granting Preliminary Approval of the Settlement.

8. ***Motion for Final Approval and Entry of Final Judgment.*** Not less than thirty-five (35) calendar days before the date set by the Court to hold a fairness hearing to consider whether this Settlement should be finally approved, Plaintiffs shall submit, in consultation with Defendants, a Motion for Final Approval of the Settlement. Defendants shall not object to a Motion for Final Approval of the Settlement by the Court seeking the following:

- a. Fully and finally approving this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class within the meaning of Rule 23(e) of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;
- b. Finding that the notice given to the Settlement Class constitutes the best notice practicable under the circumstances and complies in all respects with the due, adequate, and sufficient notice requirements of Federal Rule of Civil Procedure 23, and meets the requirements of due process;

- c. Directing that, as to Defendants, the Action and all claims therein be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs;
- d. Discharging and releasing the Releasees from the Released Claims;
- e. Permanently barring and enjoining the institution and prosecution, by any Settlement Class Member, of any other action against the Releasees based on the Released Claims;
- f. Reserving continuing and exclusive jurisdiction over the settlement and this Settlement Agreement, including all future proceedings concerning the administration, interpretation, consummation, and enforcement of this settlement, to the United States District Court for District of New Jersey;
- g. Finding under Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing that the judgment of dismissal as to Defendants shall be final and entered forthwith; and
- h. Requiring Plaintiffs' Counsel to file with the Clerk of the Court under seal a record with the names and addresses of individuals who timely opt out of the Settlement Class and to provide a copy of the record to Defendants' Counsel.

No later than five (5) business days after the Court fully and finally approves this Settlement Agreement and its terms, Plaintiffs shall seek entry of Final Judgment of the Action.

9. ***Effect on Continued Proceedings against the Defendants.*** On the date the Court enters an order preliminarily approving the Settlement Agreement, Plaintiffs and each Settlement Class Member, and anyone claiming through or on behalf of them, shall be barred and enjoined

from commencing, instituting, continuing to prosecute, intervening in, participating in as class members or otherwise, or receiving any benefits or relief from any action or any proceeding against Defendants in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any of the Released Claims against the Releasees or Defendants' Counsel and any claims arising out of, relating to, or in connection with the defense, settlement, or resolution of the Action or the Released Claims, except for claims relating to the enforcement of the terms of this Settlement Agreement.

10. ***Notification of Federal and State Officials.*** The Settlement Administrator shall notify federal and state officials of the Settlement as specified in 28 U.S.C. §§ 1715(a) & (b).

**Release and Discharge**

11. ***Released Claims.*** In addition to the effect of the Final Judgment entered in the Action, on the Effective Date and in consideration of payment of the Settlement Fund Amount described in Paragraph 17 of this Settlement Agreement, the Releasees shall be fully, finally, and forever released, acquitted, and discharged from any and all manner of claims, demands, rights, actions, suits, and causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, injuries, attorneys' fees, judgments, liens, losses, debts, obligations, guarantees, indemnities, and obligations of every kind and nature in law, equity, or otherwise that Releasors, or any one of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, jointly or severally, whether known or unknown, relating in any way whatsoever to the allegations, claims, demands, or causes of action asserted in the Action by the Settlement Class. The parties intend that this release extinguish all claims that have been or could have been brought by the settlement class

members based on the antitrust matters set forth or otherwise alleged or referred to in the Fourth Amended Complaint filed in the Action. For the sake of clarity, the Settling Parties recognize and agree that (1) Released Claims shall include antitrust claims that are known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, disclosed or undisclosed, contingent or accrued, regardless of the type or amount of relief or damages claimed; and (2) Released Claims shall include any unknown antitrust claims regardless of whether, if known by Settlement Class Members, such claims might have affected this Settlement Agreement with Defendants and the release of the Releasees.

12. The Released Claims do not include any claim for any product defect, breach of warranty, breach of contract, claim under the Uniform Commercial Code, claims for personal or bodily injury, claims for violation of ERISA, claims for discrimination, classification or misclassification, workplace safety, employee leave or benefits or claims under the WARN Act, or overtime pay under the Fair Labor Standards Act or similar state labor codes.

13. ***Covenant Not to Sue.*** Releasors, and anyone claiming through or on behalf of them, shall not sue or otherwise seek to establish liability against Defendants or any of the Releasees based, in whole or in part, on any of the Released Claims or conduct at issue in the Released Claims. Releasors and Class Counsel acknowledge that they and Defendants each consider it to be a material term of this Settlement Agreement that all Releasors will be bound by the provisions of this paragraph.

14. ***Select Relinquishment of Rights.*** Upon final approval and entry of Final Judgment by the Court, Defendants waive and relinquish as against each Settlement Class Member any rights that they might otherwise have pursuant to arbitration agreements, forum selection clauses, or jury waiver clauses with respect to the Released Claims.

15. ***Waiver of California Civil Code Section 1542 and Similar Laws.*** The Releasors acknowledge that for the consideration received hereunder, it is their intention to release, and they are releasing all Released Claims, whether known or unknown. In furtherance of this intention, the Releasors expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code Section 1542 (“Section 1542”) and similar statutes or common law principles in other states. The Releasors acknowledge that they have been advised by Class Counsel of the contents and effects of Section 1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

16. ***Express Waiver of Rights.*** The provisions of the Release set forth above in Paragraph 11 shall apply according to their terms, regardless of provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. The Releasors may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims, but the Releasors hereby expressly waive and fully, finally, and forever relinquish any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release and covenant not to sue set forth in Paragraphs 11, 12, and 13.

**Settlement Consideration: Payment**

17. ***Settlement Payment.*** Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Defendants shall pay the remaining balance of

the Settlement Fund Amount, less the amount for notice and claims administration already paid by Defendants pursuant to Paragraph 7 herein, in lawful money of the United States into the Escrow Account within fifteen (15) calendar days of entry of the Court's Order of Final Approval of the Settlement.

18. **Notice, Fees, and Costs.** Upon entry of the Court's order granting the Preliminary Approval Motion (the "Preliminary Approval Order"), Plaintiffs and the Settlement Administrator shall provide notice to the Settlement Class as set forth in the Preliminary Approval Order. Costs, fees, and expenses related to administering the settlement, including providing notice to the Settlement Class and providing notice to state and federal officials, shall be paid out of the Settlement Fund Amount.

19. **No Additional Payments by Defendants.** Under no circumstances will Defendants or any of the Releasees be required to pay more than the Settlement Fund Amount and under no circumstances shall this Settlement Agreement be construed to require Defendants or any of the Releasees to make any other payments.

20. **No Other Discovery.** From and after the date this Settlement Agreement is fully executed, neither Defendants nor Plaintiffs or any Settlement Class Member, shall file motions against the other or initiate or participate in any discovery, motion practice, or proceeding directly adverse to the other in connection with the Action, except as specifically provided for herein. Defendants and Plaintiffs shall not be obligated to respond or supplement prior responses to formal discovery that have been previously propounded by the other in the Action. Defendants shall retain the right, by motion or otherwise, to protect, or attempt to protect, from disclosure any and all documents and information designated as Confidential and/or Attorneys' Eyes Only under the Discovery Confidentiality Order in this Action (ECF No. 86).

**Settlement Fund Amount**

21. ***Exclusivity of Relief in Settlement Fund Amount.*** Each Settlement Class Member shall look solely to the Settlement Fund Amount for settlement and satisfaction, as provided herein, of all claims released by the Releasors under Paragraphs 11-16 herein. Except as provided by order of the Court after finally approving the Settlement Agreement, no Settlement Class Member shall have any interest in the Settlement Fund Amount or any portion thereof. Incentive awards to Class Representatives may be ordered or authorized by the Court and paid from the Settlement Fund Amount. Any payment or lack of payment of incentive awards shall have no effect on the finality of the Settlement Agreement or the claims released by the Releasors under Paragraphs 11-16 of this Settlement Agreement.

22. ***Escrow Fund Interest.*** Payments into the Escrow Account may, when made, be invested in instruments secured by the full faith and credit of the United States, and any interest earned thereon shall add to and become part of the Settlement Fund Amount.

23. ***Allocation of Settlement Fund Amount.*** All Settlement Class Members will receive payment from the Settlement Fund Amount and shall only be excluded from receiving payment if they timely and validly opt out in accordance with the procedures set forth in the notice served on the Class, subject to approval by the Court. Allocating the Settlement Fund Amount among the Settlement Class shall be based on a Plan of Allocation approved by the Court. The parties shall endeavor to calculate each class member's *pro rata* share of the settlement and send distributions to them directly without the need for individual claim forms. If there is insufficient information to make the distribution for any class members, then they will be entitled to submit a claim.



24. ***No Liability for Distribution of Settlement Fund Amount.*** Except as provided in Paragraph 17, neither Defendants nor Defendants' Counsel nor any of the Releasees shall have any responsibility for, financial obligation for, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund Amount, including, but not limited to, the costs and expenses of such investment, distribution, or administration. Defendants, the Releasees, and Defendants' Counsel shall likewise have no responsibility for, financial obligation for, or liability whatsoever with respect to distribution of the Settlement Fund Amount. Defendants shall not be responsible or otherwise liable for any disputes relating to the amount, allocation, or distribution of any attorneys' fees, costs, or incentive awards.

25. ***Distribution of Settlement Fund Amount.*** After the Effective Date, the Settlement Fund Amount will be distributed in accordance with the orders of the Court and this Settlement Agreement, including a Plan of Allocation that Class Counsel shall submit at the appropriate time for approval by the Court.

**Attorneys' Fees and Reimbursement of Costs; Incentive Awards**

26. Class Counsel may, in its sole discretion, seek an award of the Fee and Cost Amount at the time of filing the Preliminary Approval Motion or at the time notice is disseminated to the Settlement Class. Defendants will not oppose Class Counsel's request for the Fee and Cost Amount.

27. Any order or proceeding relating to any application for, or approval of, the Fee and Cost Amount, the pendency of any such application, or any appeal or review of an order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement, or affect or delay the finality of the Final Judgment.

28. Class Counsel shall have sole authority to determine the allocation of attorneys' fees awarded by the Court. Defendants, Defendants' Counsel, and the Releasees shall have no responsibility for, and no liability whatsoever with respect to, the division of attorneys' fees and expenses among Class Counsel, and any negotiation or dispute among Class Counsel in that regard shall not operate to terminate or cancel this Settlement Agreement or affect or delay the finality of the Final Judgment. Defendants, Defendants' Counsel, and the Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment to Class Counsel or to any other counsel representing any Plaintiff or any member of the Settlement Class or to any other Person who may assert some claim thereto or to any other fee and expense award that the Court may make in this Action, other than as set forth in this Settlement Agreement.

29. ***Incentive Awards.*** Class Counsel may seek Court approval for incentive awards to the Class Representatives to compensate them for their participation in this Action, which Defendants will not oppose. Such incentive awards shall be paid out of the Settlement Fund Amount after Court approval and the Effective Date, and in no event shall Defendants or any of the Releasees be obligated to pay anything in addition to the Settlement Fund Amount.

**Disbursement of the Settlement Fund Amount**

30. Disbursements of the Settlement Fund Amount may be distributed to Settlement Class Members in accordance with a Plan of Allocation subject to approval by the Court.

31. The Settlement Fund shall be applied: (i) first, to pay the costs of all required notices and settlement administration; (ii) to pay Plaintiffs' Counsel's attorneys' fees and expenses and any Plaintiff incentive awards in the amount awarded by the Court, neither of which Defendants will oppose; and (iii) third, to pay Settlement Class Members their *pro rata* share of the remaining Settlement Fund Amount.

32. ***Balance Remaining in Settlement Fund Amount; No Reversion.*** If monies remain from the Settlement Fund Amount following all distribution efforts approved by the Court (whether by reason of tax refunds, uncashed checks, or otherwise), Class Counsel shall move the Court for an order disposing of all such funds, including additional possible distributions to the Settlement Class and/or *cy pres* distribution as approved by the Court. In such event, no portion of the Settlement Fund Amount shall revert or be returned to Defendants. The parties shall negotiate in good faith regarding a *cy pres* recipient, if any.

**Settlement Consideration: Corporate Reform**

33. Defendants agree to notify all managers of company-owned locations and franchise operators and/or owners (as applicable) that there is no prohibition, restriction, “corporate culture,” or any other understanding preventing the solicitation or hiring of Defendants’ current or former employees or current or former employees of franchise operators and/or owners (as applicable). Defendants agree to provide notice to all managers of company-owned locations and franchise operators and/or owners (as applicable), and also agree to post this communication on its internal website.

**Rescission of the Settlement Agreement**

34. ***Option to Rescind.*** If (a) this Settlement Agreement is not approved by the Court in substantially the form drafted and agreed upon by the Parties, including certification of the Settlement Class; or (b) if any material objections to the Settlement Agreement are sustained by the Court; or (c) if final approval of this Settlement does not occur and the Court does not enter the Final Order and Judgment substantially in the form agreed to by the Parties; then Defendants and Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice to the undersigned counsel, by

personal delivery, email, or by overnight courier within ten (10) business days of an Order by the Court satisfying any of the preceding conditions in this Paragraph. A modification or reversal on appeal of the Fee and Cost Amount awarded by the Court, the Class Representatives' incentive awards, or the Plan of Allocation shall not be deemed a modification of this Settlement Agreement or the Final Judgment and shall not provide an option to rescind under this paragraph.

**35. *Effect of Paragraph 34 Rescission or Elective Withdrawal under Paragraph 36.***

If the Settlement Agreement is rescinded, canceled, or terminated pursuant to Paragraphs 34 or 36, any and all obligations pursuant to this Settlement Agreement shall cease immediately. In no event, however, shall any funds deposited pursuant to Paragraph 7 for notice and/or administration be refunded.

**36. *Elective Withdrawal.*** If the number of individuals that timely and validly opt out of the Settlement Class exceeds 5% of the headcount of the Settlement Class then Defendants, in their sole discretion, shall have the unilateral, unconditional option to withdraw from the Settlement Agreement and render the Settlement Agreement null and void.

**37. *Written Notice of Termination.*** To exercise its option to terminate the Settlement Agreement, Defendants' Counsel must provide Class Counsel with written notice no later than twenty-eight (28) days after Defendants have received from the Settlement Administrator information indicating that more than 5% of the headcount of the Settlement Class have timely and validly opted out of the Settlement.

**38. *Use of Agreement as Evidence.*** This Settlement Agreement, regardless of whether it shall become final, and any and all negotiations, documents, and discussions associated with it, shall be governed by Rule 408 of the Federal Rules of Evidence and shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or

of any liability or wrongdoing by Defendants or of the truth of any of the claims or allegations made in the Action, and evidence thereof shall not be admissible or used directly or indirectly in any way in the Action or in any other action or proceeding, except an action to enforce or interpret the Settlement Agreement. The parties expressly reserve all of their rights if this Settlement does not become final in accordance with the terms of this Settlement Agreement.

### **Taxes**

39. ***Responsibility regarding Taxes.*** Class Counsel shall be solely responsible for directing the Settlement Administrator to file all informational and other tax returns necessary to report any taxable and/or net taxable income earned by the Settlement Fund Amount. Further, Class Counsel shall be solely responsible for directing the Escrow Agent to pay from the Settlement Fund, as and when legally required, any and all Tax Expenses. Class Counsel shall be entitled to direct the Escrow Agent in writing to pay customary and reasonable Tax Expenses, including reasonable professional fees and expenses incurred in connection with carrying out their responsibilities as set forth in this paragraph, from the Settlement Fund by notifying the Escrow Agent in writing. Defendants and the Releasees shall have no responsibility to make any tax filings or tax payments relating in any way to payments made pursuant to this Settlement Agreement.

40. ***Settlement Administrator is IRS Administrator.*** For purposes of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “Administrator” of the Escrow Account shall be the Settlement Administrator, who shall timely and properly file or cause to be filed on a timely basis, all tax returns necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and all returns described in Treas. Reg. § 1.468B-2(1)).

41. ***Treatment of Escrow Account.*** The parties to the Settlement Agreement and their counsel shall treat, and shall cause the Settlement Administrator to treat, the Escrow Account as being at all times a “qualified settlement fund” (“QSF”) within the meaning of Treas. Reg. § 1.468B-1. The Settlement Fund Amount will be invested in instruments secured by the full faith and credit of the United States or an interest bearing or non-interest bearing deposit obligation of Endeavor Bank insured by the Federal Deposit Insurance Corporation to the applicable limits, and any interest earned (or negative interest) thereon shall become part of (or paid from) the Settlement Fund Amount. Defendants shall be the “transferor” to the QSF within the meaning of Section 1.468B-1(d)(1) of the Treasury Regulations with respect to the Settlement Fund Amount or any other amount transferred to the QSF pursuant to this Settlement Agreement. The Settlement Administrator shall be the “administrator” of the QSF within the meaning of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Section 1.468B-2(l)(2) of the Treasury Regulations or any other applicable law on or with respect to the QSF. Defendants and the Settlement Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including any relation-back election within the meaning of Section 1.468B-1(j) of the Treasury Regulations.

42. ***Treatment of Escrow Account as QSF.*** The Settling Parties, their counsel, the Settlement Administrator, and the Escrow Agent agree that they will not ask the Court to take any action inconsistent with the treatment of the Escrow Account as a QSF. In addition, the

Settlement Administrator and, as required, the parties shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Settlement Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1.

43. ***Settlement Fund Amount Interest.*** Interest earned by the Settlement Fund Amount shall be for the benefit of the Settlement Class.

44. ***Tax Withholding and Reporting.*** Payments to Plaintiffs and other Settlement Class Members from the Escrow Account will be subject to applicable tax withholding and reporting requirements and shall be made net of all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and applicable FICA and Medicare taxes. Disbursements from the Settlement Fund Amount for the payment of any taxes shall be made by the Escrow Agent in accordance with all applicable state and federal statutes and regulations.

45. ***Employment Taxes and Withholding.*** The Settlement Administrator, as administrator of the QSF, shall report that portion of the Settlement Fund Amount payable by the QSF as wages to each eligible Settlement Class Member to the IRS and to other appropriate Taxing Authorities, and each of them, on an IRS Form W-2, or any other applicable form. Such amounts shall be subject to applicable employment taxes and withholding taxes, including,

without limitation, FICA, FUTA, Medicare, and any state and local taxes, including without limitation, SUTA, as determined by the Settlement Administrator as administrator of the QSF making such payments.

46. ***Payment of Taxes.*** The Settlement Administrator shall pay from the QSF the employee's and employer's shares of all applicable U.S. federal, state, and local taxes, including, without limitation, the employer's share of FICA, FUTA, Medicare, and any state and local taxes, including without, limitation, SUTA, required to be paid by an employee or employer on amounts treated as wages (all such U.S. federal, state, and local taxes, collectively the "Payroll Taxes"). Plaintiffs, Class Counsel, Settlement Class Members, and the Settlement Administrator shall not seek payment for payroll taxes from Defendants or any of the Releases.

47. ***Reporting if Treated as Other than Wages.*** If any portion of the Settlement Fund Amount payable by the QSF to any eligible Settlement Class Member is determined to be treated as other than wages, the Settlement Administrator, as administrator of the QSF, shall report that portion to the Settlement Class Member, and all applicable Taxing Authorities, to the extent required by law, under the Settlement Class Member's name and U.S. federal taxpayer identification number on IRS Forms 1099, 1042-S, or other applicable forms, and such payments shall be made without deduction for taxes and withholdings, except as required by law, as determined by the Settlement Administrator as administrator of the QSF making such payments.

48. ***Satisfaction of Taxes and Reporting.*** The Settlement Administrator shall be responsible to satisfy from the Settlement Fund Amount any and all federal, state, and local employment and withholding taxes, including, without limitation, federal, state and local income tax withholding, and any U.S. federal taxes including, without limitation, FICA, FUTA, and Medicare and any state employment taxes including, without limitation, SUTA. The Settlement



Administrator shall promptly provide to Defendants the information and documentation (including copies of applicable IRS and state forms) reasonably requested by Defendants with respect to the payment or remittance of such employment and withholding taxes. The Settlement Administrator shall satisfy all federal, state, local, and other reporting requirements (including, without limitation, any applicable reporting with respect to attorneys' fees and other costs subject to reporting), and any and all taxes, together with interest and penalties imposed thereon, and any other obligations with respect to the payments or distributions under the terms of this Settlement Agreement not otherwise addressed herein.

49. ***Tax Forms.*** The Settlement Administrator shall be responsible for procuring any required tax forms from Settlement Class Members before making any such payments or distributions.

50. ***Express Statement of No Liability for Tax Obligations.*** For avoidance of doubt, Defendants, Defendants' Counsel, the Releasees, Plaintiffs, and Class Counsel shall have no liability, obligation or responsibility whatsoever for tax obligations arising from payments to any Settlement Class Member or based on the activities and income of the QSF. In addition, Defendants, Defendants' Counsel, and the Releasees shall have no liability, obligation or responsibility whatsoever for tax obligations arising from payments to Plaintiffs or Class Counsel. The QSF shall be solely responsible for its tax obligations. Class Counsel shall be solely responsible for their own tax obligations.

51. ***No Tax Advice or Representations.*** Plaintiffs, individually and on behalf of the Settlement Class, and Class Counsel and each of them represent and agree that they have not received and/or relied on any advice and/or representations from Defendants, the Releasees, or Defendants' Counsel as to taxes, including the taxability of the payments received pursuant to

this Settlement Agreement. Class Counsel represent that neither Plaintiffs nor Class Counsel provided any advice as to the taxability of payments received pursuant to this Agreement.

**Miscellaneous**

52. ***Basis for Plaintiffs' Agreement to Settle.*** Plaintiffs expressly warrant that, in entering into the settlement, they have relied solely on their own knowledge and investigation, and not on any promise, representation, warranty, or other statement by Defendants not expressly contained in this Settlement Agreement.

53. ***Objections.*** The procedures and requirements regarding Settlement Class Members' rights and options, including filing objections in connection with and/or appearing at the fairness hearing, are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Member's due process rights. The Settling Parties will request that the Preliminary Approval Order further provide that objectors who fail to properly or timely file their objections, along with the required information and documentation set forth above, or to serve them as provided above, shall not be heard during the fairness hearing, nor shall their objections be considered by the Court.

54. ***Headings.*** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

55. ***No Party Deemed to Be the Drafter.*** None of the parties hereto shall be deemed to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

56. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement among Plaintiffs and Defendants pertaining to the settlement of the Action and supersedes any and all prior and contemporaneous undertakings of the Settling Parties in connection therewith. This is an integrated agreement. This Settlement Agreement may be modified or amended only by a writing executed by Class Counsel and Defendants' Counsel and approved by the Court.

57. **Determination of Illegal, Invalid, or Unenforceable Provision.** With the exception of Paragraphs 11-16 of this Settlement Agreement, if any one or more of the provisions of this Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, such illegality, invalidity or unenforceability shall not affect any other provision if Defendants' Counsel and Class Counsel mutually agree to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement. If any portion or all of Paragraphs 11-16 of this Settlement Agreement shall for any reason be held to be illegal, invalid or unenforceable in any respect, Plaintiffs and Defendants shall each, in their sole discretion, have the option to rescind this Settlement Agreement in its entirety by providing written notice to the undersigned counsel, by personal delivery, email, or by overnight courier within ten (10) business days of such holding.

58. **Retention of Rights.** Defendants retain their rights under the Discovery Confidentiality Order in this Action (ECF No. 86) to seek to maintain the confidentiality of any of their documents so designated, including with respect to any appeal in the Action.

59. **Choice of Law.** All terms of this Settlement Agreement shall be governed and interpreted according to the substantive laws of New Jersey without regard to its choice of law or conflict of laws principles.

60. ***Consent to Jurisdiction.*** The Court retains exclusive jurisdiction over all matters relating to the implementation, enforcement, and performance of the Settlement Agreement. The Settling Parties hereby irrevocably submit to the exclusive and continuing jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or related to this Settlement Agreement or the applicability or interpretation of this Settlement Agreement, including without limitation any suit, action, proceeding, or dispute relating to the Released Claims and Paragraphs 11-16 of this Settlement Agreement.

61. ***Execution in Counterparts.*** This Settlement Agreement may be executed in counterparts by Class Counsel and Defendants' Counsel, and a PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement and so executed shall constitute one agreement.

62. ***Binding Effect.*** This Settlement Agreement shall be binding on, and inure to the benefit of, the heirs, successors, and assigns of the Settling Parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs and Class Counsel shall be binding on all Settlement Class Members and all Releasees and Releasers.

63. ***Timeframe.*** To the extent that any timeframe set out in this Settlement Agreement is ambiguous, said ambiguity shall be resolved by applying the convention contained in Rule 6 of the Federal Rules of Civil Procedure.

64. ***Authorization to Enter Settlement Agreement.*** Each of the undersigned attorneys represents that he or she is fully authorized to conduct settlement negotiations and to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of his or her respective clients, subject to Court approval.

65. ***Confidentiality of Settlement Negotiations.*** Class Counsel shall keep strictly confidential and not disclose to any third party, including specifically any counsel representing any other current, future, or former party to the Action, any non-public information regarding the Settling Parties' negotiation of the settlement or the Settlement Agreement, except that the Settling Parties may file under seal any documents concerning this settlement or the negotiation of the Settlement Agreement in connection with a motion or proceeding to enforce or contest the terms of this Settlement Agreement. Information contained within this Settlement Agreement shall be considered public. After Preliminary Approval, the Settling Parties reserve the right to issue a press release regarding execution of the Settlement Agreement and the amount paid in connection with the Settlement Agreement. The Settling Parties agree that before Preliminary Approval of the Settlement Agreement, they shall not publish, issue, or cause to be issued any such press release concerning the Settlement Agreement. In response to media inquiries, the Settling Parties, and their counsel, agree to limit their response to "the parties have reached an agreement to settle the matter." However, the Settling Parties agree that nothing in this paragraph precludes or limits the Defendants from communicating with their employees or franchisees about the Settlement Agreement as they deem appropriate in their sole discretion, and as contemplated by the corporate reform provisions in Section 33 of this Settlement Agreement.

66. ***Notices.*** Any notice or other communication required or permitted to be delivered to any party under this Settlement Agreement shall be in writing and shall be deemed properly delivered, given, and received when delivered either by hand, by registered mail, by courier or express delivery service, or by electronic mail, (or to such other address or electronic mail address, as such party shall have specified in a written notice given to the other parties):

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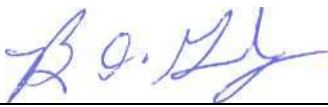
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**IN WITNESS WHEREOF**, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

By:   
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IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

By:   
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