

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA (EASTERN)**

JILL TOMPKINS and ELLA METCALF, on
behalf of themselves and all others similarly
situated,

Case No.: 3:18-cv-00190

Plaintiffs,

vs.

FERNY PROPERTIES, LLC. d/b/a THE
NORTHERN GENTLEMEN’S CLUB, and
DOE DEFENDANTS 1-10,

Defendants,

RELEASE AND SETTLEMENT AGREEMENT

I. INTRODUCTION

1.1 This Release and Settlement Agreement (which, together with all attached exhibits, is referred to collectively herein as the “Agreement”) is entered into between Plaintiff Ella Metcalf¹ (sometimes the “Named Plaintiff” or the “Class Representative”) to this Action,² on behalf of herself and all others similarly situated (the Named Plaintiff and all Class Members are collectively referred to hereinafter simply as the “Plaintiffs”), and Ferny Properties, LLC d/b/a The Northern Gentlemen’s Club (“Defendants”). This Agreement settles – except for those matters specifically reserved herein – collective claims brought pursuant to the provisions of the Fair Labor Standards Act (29 U.S.C. § 201, *et seq.* -- the “FLSA”) and class action claims under North Dakota law

¹ Plaintiff’s counsel has not yet heard from the estate of original Named Plaintiff Jill Tompkins. If and when Ms. Tompkins’s estate decides to further participate in this lawsuit, Plaintiff’s counsel will notify all parties and the Court.

² Capitalized terms and phrases contained in this Introduction and in the Recitals portion of this Agreement are specifically defined in Article III herein or elsewhere in this Agreement.

pursuant to Federal Rule of Civil Procedure Rule 23 (“Rule 23”). Upon execution of this Agreement, Final Approval by the Court, and the Judgment becoming Final, it is the express intent of the Parties to resolve all Claims – except those specifically reserved herein – which were brought (both initially and by way of any amendment permitted under this Agreement), or which could have been brought based upon the facts pled, by the Class Representative, by all “opt in” Class Members who file a Consent to Join this Action, and by all Class Members who have declined to Opt Out of the Settlement Agreement and who therefore constitute the Rule 23 Settlement Class. The Settlement shall become fully operative upon the date that the Judgment becomes Final.

II. RECITALS

2.1 On or about September 19, 2018, Jill Tompkins (a “Named Plaintiff”) filed a Class and Collective Action Complaint for Violation of the FLSA and North Dakota (the “Complaint”) in the United States District Court for the District of North Dakota on her own behalf and, purportedly, as representative of a class and collective on behalf of other “similarly situated” individuals, against Defendants (the “Action”).

2.2 On or about August 8, 2019, Ella Metcalf (a “Named Plaintiff”) filed suit in the United States District Court for the District of North Dakota and, on or about August 15, 2019, Ms. Metcalf filed a First Amended Complaint in the same action which named Defendants.

2.3 During the pendency of the Action, Ms. Tompkins became deceased. The Named Plaintiffs then, on September 23, 2020 filed an Amended Class/Collective Action Complaint in the Action naming both of the Named Plaintiffs.

2.4 In the Action, the Named Plaintiffs assert Claims throughout the potentially applicable statutes of limitations; that being three (3) years under the FLSA (back to September

19, 2015) and two (2) years (back to September 19, 2016) under North Dakota law pursuant to N.D.C.C. § 34-01-13

2.5 Edward W. Ciolko of Carlson Lynch, LLP requests to be appointed class counsel in this Action.

2.6 The Named Plaintiffs contend through the Action, and have contended in subsequent discussions, negotiations, and proceedings described below, that that each of the Defendants were their employer or their joint-employer under the FLSA and North Dakota law. Plaintiffs generally allege that they were misclassified as non-employees, and as result were not paid the wages required by the FLSA and North Dakota law.

2.7 The Defendants deny each and every one of these allegations and assertions of the Named Plaintiffs.

2.8 In an effort to resolve their disputes, minimize the incurrence of substantial but potentially unnecessary attorneys' fees, and bring a close to the Action, the Parties conducted in person and numerous telephonic settlement meetings, including with the assistance of Magistrate Judge Alice R. Senechal. Throughout the process, Defendants voluntarily disclosed certain business records and other information requested by Plaintiffs, regarding Plaintiffs, Defendants, and the Class Members.

2.9 On or about September 9, 2020, the Parties reached an understanding in principle as to the general terms under which the Action could be settled, which broadly laid out the terms of settlement and that required Parties to attempt to negotiate a full and complete settlement agreement (which is now memorialized by this Agreement).

2.10 In light of the above, Class Counsel have engaged in extensive, creative, and, at times, quite spirited arms-length negotiations with Defense Counsel with a view toward achieving

substantial benefits for the Class Members and to comprehensively address the worker misclassification issue, while avoiding the cost, delay and uncertainty of further litigations, trials, and appellate review.

2.11 During the course of the negotiations, and since this Action was filed, Defendants have asserted, and continue to assert, both formally and in discussions with Class Counsel, that they have substantial defenses to the Claims brought by the Named Plaintiff. The Named Plaintiff, for her part, disputes the validity of these defenses and stands by her belief in the substance and viability of her claims. Nevertheless, these defenses, asserted by the Defendants, include, but are not limited, to the following (inclusion of these Defenses should not be taken in any way, shape, or form as agreement by Named Plaintiff or the proposed class as to the strength, applicability, or relevance of such Defenses to this action or the claims asserted herein):

2.11.1 Entertainers are properly classified as independent contractors because, among other things, they perform if, when, where and for whom they choose; they are not paid by the hour; they are not terminable at will; they control their profits and losses; they must exercise independent initiative in order to successfully engage in their professional occupation; they perform at other businesses; and they intended to be independent contractors and/or non-employees; and they specifically rejected the ability to become Club employees when that option was offered to them;

2.11.2 Entertainers earn more income as IPE's than they would as employees, and after offset of non-tip service charge monies paid to the Entertainers, the Entertainers would not be entitled to any compensation, damages or restitution of any kind;

2.11.3 A variety of formal rulings from the Internal Revenue Service ("IRS") and the United State Department of Labor ("DOL") support the position of the Defendants that

the mandatory entertainment charges collected from customers by Entertainers are, in fact, “service charges” and not tip income, which could be used, under applicable law, to satisfy any minimum wage obligations found to be due if the Entertainers there were ultimately found to have been the employees of the applicable establishments;

2.11.4 Because the mandatory charges to customers cannot under the law be considered to be tips, the Class Members have no valid claims for tip confiscation; and

2.11.5 The Class members lack standing to bring any Claims for minimum wage or overtime payments since they do not report their tip income to the Club and the Club does not then make deductions from their “wages.” In the unlikely event that the Class Members were found to have been employees of the Club, any remaining wages theoretically found to be due and owing would be required to be remitted, under the provisions of the Internal Revenue Code and North Dakota tax law, to the Internal Revenue Service and state taxing authorities as withholdings due on the tip income earned by the Class Members;

2.12 As such, Defendants deny each and every one of the Claims that are asserted, that will be asserted by way of the amendment permitted by this Agreement, or that could have been asserted, by the Named Plaintiffs in the Action, including but not limited to Claims alleging worker misclassification; entitlement to employment wages, benefits, penalties or other remuneration; and the imposition of joint employer liability. Nevertheless, in an effort to end this litigation and to buy their peace, Defendants agree to enter into this Agreement. Defendants willingness to conditionally consent to class and collective treatment of Plaintiffs’ Claims shall not be construed as any form of admission of wrongdoing, liability, or the propriety of certifiability of the Claims.

Rather, all wrongdoing and liability, and the certifiability of Claims except for the limited purpose of settlement, is expressly and specifically denied by each and every one of the Defendants.

2.13 Notwithstanding their differing view on the merits of the various Claims and potential counterclaims in this Action, and in measured consideration of the forgoing, and as a consequence of the negotiations between the Parties and of Class Counsels' investigations, analysis, and informal discovery, the Parties agree to settle the Action under the terms and conditions memorialized in this Agreement; believing such Settlement to be fair, reasonable, adequate, and in the best interests of the Class and the general public.

NOW THEREFORE, in consideration of the foregoing and of the promises and mutual covenants contained herein, and other good and valuable consideration, the adequacy of which is acknowledged, it is hereby agreed by and among the undersigned Parties as follows:

III. DEFINITIONS

As used in this Settlement Agreement and the attached exhibits, the following words and phrases shall have the meanings specified in this Article. Capitalized words and phrases in such definitions, not previously explained, are further defined herein.

3.1 "Administrative Costs" means the administrative costs of settlement incurred by the Settlement Administrator, including but not limited to preparation and copying of the Class Notice, mailing of the Class Notice, website maintenance, tracking Class Members who have requested exclusion from the Settlement by the submission of an Opt-Out Form and the consequent preparation of the Opt-Out List, the administration, calculation and remittance of Settlement Checks, the remittance of other payments provided for in this Agreement, and any other reasonable fees and costs incurred or charged by a jointly approved Settlement Administrator in connection with the execution of its duties under this Agreement.

3.2 “Attorney Fee and Expense Award” means such funds that Class Counsel or any other attorney may receive directly from Defendants or through an Order of the Court to compensate them for their work in the Action and obtaining the Settlement for the Class pursuant to their Claims under Section 216(b) of the FLSA and Rule 23 for state law claims.

3.3 “Bar Date” means the final time and date by which a Cash Claim Form must be postmarked to the Settlement Administrator in order for a Class Member to be eligible to receive a Monetary Settlement Benefit in the form of a Cash Payment. The Bar Date shall be specifically identified and set forth in the Preliminary Approval Order and the Class Notice.

3.4 “Cash Payment” means the amount of money to be paid pursuant to the terms of this Agreement to Participating Class Members. Although the term “cash” is used, Cash Payments will be paid via check.

3.5 “Cash Pool” or “Cash Settlement Pool” means the Gross Settlement Amount minus: a) the Enhancement Payments; b) specified Administrative Costs; and c) the Attorney Fee and Expense Award. The Cash Pool will be divided into two portions. First, all Class Members will receive equal shares of 33.3%, of the Cash Pool (the “Equal Distribution Fund”). Second, 66.7% of the Cash Pool will be distributed to Claimants (defined herein) pursuant to a “claims-made” procedure, whereby each Claimant shall receive a payment based on the Claimant’s proportional share of damages as determined by the Claims Administrator. This second portion is referred to as the “Proportional Distribution Fund.”

3.6 “Claim(s)” means, when used alone herein and not as a part of another specifically defined phrase and unless specifically limited when used, any and all past, present and future claims, actions, demands, causes of action, suits, debts, obligations, damages, and rights or other assertions of liability or wrongdoing, of any conceivable kind, nature and description whatsoever,

whether known or unknown, whether existing or potential, whether fixed or contingent, whether asserted or not, recognized now or hereafter and whether expected or unexpected, pursuant to any theory of recovery and whether at law, in equity or otherwise, including but not limited to those based in contract, tort, common law, federal, state or local law, statute, ordinance, or regulation, and whether for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements (including but not limited to those incurred by Class Counsel or any other counsel representing the Class Representative or any Settlement Class Members), that a Person may have.

3.7 "Claim Form" means a form in all material respects identical to **Exhibit A**, which is to be provided to Class Members and returned to the Settlement Administrator in order for them to become eligible to receive a Cash Payment from the Proportional Settlement Fund under this Agreement.

3.8 "Class" means the group of all current and former Entertainers who Performed at the Club at any time during the applicable Class Period.

3.9 "Class Counsel" means Edward W. Ciolko of Carlson Lynch, LLP

3.10 "Class Member" means any individual who Performed at any time during the Class Period.

3.11 "Class Notice" means the proposed notice to putative Class Members which shall conform in all material respects to the document attached as **Exhibit B**.

3.12 "Class Period" means, for purposes of the Settlement and this Agreement: September 19, 2015 up to and including the date of Preliminary Approval.

3.13 "Class Representative" means the Named Plaintiff and/or any other person(s) duly appointed as additional or successor representatives of the Settlement Class.

3.14 “Club” means Ferny Properties, LLC d/b/a *The Northern Gentlemen’s Club* at or about 325 10th Street North in Fargo North Dakota.

3.15 “Consent to Join” means a Class Member’s consent to join as a party plaintiff to the FLSA Claims asserted in this Action pursuant to 29 U.S.C. § 216(b). A Class Member’s submission of a Claim Form to the Settlement Administrator shall serve as that Class Member’s Consent to Join.

3.16 “Court” means the United States District Court for the District of North Dakota.

3.17 “Dancer Contract” means a contract entered into between an Entertainer and a Club, which permits the Entertainer to Perform, and to engage in personal entertainment performances for remuneration, upon the Club’s premises.

3.18 “Defense Counsel” means Mark R. Hanson of Niles Lawyers in Fargo, North Dakota and, Bradley J. Shafer and Matthew J. Hoffer of Shafer & Associates, P.C., in Lansing, Michigan.

3.19 “Effective Date” means seven (7) days after which both of the following events have occurred: (a) the Final Approval Order and Judgment have been entered, and (b) the Judgment has become Final.

3.20 “Enhancement Payments” means the amount approved by the Court to be paid to the Class Representative identified in Section 9.5 for the purposes set forth therein.

3.21 “Entertainer(s)” means Persons who dance, Perform, and/or entertain, or who have danced, Performed or entertained, on the premises the Club.

3.22 The “Equal Distribution Fund” means 33.3% of the Cash Pool. All Class Members will receive an equal share of the Equal Distribution Fund, regardless of whether the Class Members submit a Claim Form.

3.23 “Exclusion/Objection Deadline” means the final date, established by and set forth in the Preliminary Approval Order, by which a Class Member may either: (a) object to any aspect of the Settlement pursuant to Section 10.1; or (b) request to be excluded from the Settlement pursuant to Section 10.3.

3.24 “Fairness Hearing” means the hearing that is to take place after the entry of the Preliminary Approval Order and after the Notice Date for purposes of: (a) determining whether the Settlement should be approved as fair, reasonable, and adequate; (b) entering the Final Approval Order and Judgment and dismissing the Action with prejudice; (c) ruling upon an application for an Enhancement Payment by the Class Representative and any other so named individuals; (d) ruling upon an application by Class Counsel for an Attorney Fee and Expense Award; and (e) certifying the Opt Out List.

3.25 “Final,” when referring to the Judgment, the Settlement, or this Agreement, means that: (a) the Judgment is a final, appealable judgment; and (b) either (i) no appeal has been taken from the Judgment as of the date on which all times to appeal therefrom have expired, or (ii) an appeal or other review proceeding of the Judgment having been commenced, such appeal or other review is finally concluded and no longer is subject to review by any court, whether by way of appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of *certiorari*, or otherwise, and such appeal or other review has been finally resolved in such manner that affirms the Judgment in its entirety.

3.26 “Final Approval” means formal and written approval of the Settlement by entry of the Final Approval Order and the Judgment by the Court.

3.27 “Final Approval Order” means the order that the Class Representative will seek from the Court, to be agreed upon by the Parties, memorializing the Court’s Final Approval of the Settlement.

3.28 “FLSA Claims” means, unless specifically limited when used, any Claims of whatsoever kind or nature under, or pursuant to, the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

3.29 “General Released Claims” means any and all Claims by the Class Representative or other Settlement Class Members receiving Enhancement Payments, against the Released Parties or against any one or group of them arising during the period from the beginning of the Class Representative’s (or other Settlement Class Members receiving Enhancement Payments) first interaction with Defendants to the Effective Date, for any type of relief that can be released as a matter of law, including, without limitation, Claims for wages, damages, unpaid costs, penalties (including civil and waiting time penalties), retaliatory conduct, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, with the exception of any Claims which cannot be released as a matter of law. The General Released Claims include, but are not limited to, the Settlement Class Members’ Released Claims, the Participating Class Members’ Released Claims and any and all Claims under, pursuant to, or arising out of any and all state and federal discrimination statutes, including, without limitation, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 621 *et seq.*; the Employee Retirement Income Security Act of 1964, 29 U.S.C. §1001 *et seq.*; Title 34 of the North Dakota Century Code and all of their respective implementing regulations and interpretive guidelines.

3.30 “Gross Settlement Amount” means the total settlement amount Defendants have agreed to pay, \$200,000 (two hundred thousand dollars).

3.31 “Judgment” means the final judgment to be entered in the Action upon Final Approval of the Settlement and entry of the Final Approval Order, in a form that is approved by and acceptable to all Parties.

3.32 “Legally Authorized Representatives” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Person’s estate; a guardian, conservator, or next friend of an incapacitated Person; and/or any other legally appointed Person responsible for handling the business affairs of another Person. All rights and obligations of Class Members, Participating Class Members, Settlement Class Members and Class Representative as set forth in this Agreement extend to their Legally Authorized Representatives as well.

3.33 “Litigation Expenses” means any expenses incurred by Class Counsel in connection with the prosecution and resolution/settlement of the Action and includes all Court-approved litigation costs.

3.34 “Metcalf Action” means *Ella Metcalf v. Ferny Properties, LLC, d/b/a The Northern Gentlemen’s Club, and Kerry Fernholz*, Case No. 3:19-cv-169 in the United States District Court for the District of North Dakota.

3.35 “Negotiate,” “Negotiated,” or “Negotiation” with regard to a Settlement Check means the endorsement and cashing or depositing by the Settlement Class Member of the Settlement Check, resulting in a “cancelled” check.

3.36 “Net Cash Payment Settlement Fund” means the Cash Pool, less the Direct Attorneys’ Fees portion of the Attorney Fee and Expense Award.

3.37 “Net Settlement Fund” means the Cash Settlement Pool less the Enhancement Payments, the Attorney Fee and Expense Award, and the Administrative Costs.

3.38 “Notice Date” means the date of the initial distribution of the Class Notice to Class Members.

3.39 “Opt Out” or “Opted Out” means the mechanism for a Class Member to opt out of the Settlement as set forth in Sections 10.3-10.5.

3.40 “Opt Out Form” means a document in any fashion where a Class Member timely expresses a clear intent to be excluded from the Settlement.

3.41 “Opt Out List” means the list of all Class Members who timely and properly, in accordance with Section 11.3, submitted an Opt Out Form.

3.42 “Opt Out Period” means a period of sixty (60) days from the Notice Date, within which time a Class Member’s request to be excluded from the settlement (by submission of an Opt Out Form) must be signed by the Class Member, be postmarked, and be mailed to the Settlement Administration.

3.43 “Participating Class Member(s)” means the Class Representative and all Class Members who Negotiate a Settlement Check.

3.44 “Participating Class Members’ Released Claims” means, for a Participating Class Member, her Settlement Class Members’ Released Claims, together with any and all FLSA Claims from the beginning of her applicable Class Period(s) up to and including the date Judgment becomes Final.

3.45 “Parties” means, collectively, the Class Representative, Settlement Class Members, and Defendants, and “Party” means any one of them.

3.46 “Perform(s),” “Performed,” “Performing,” and “Performances” means all acts of entertaining, dancing, and/or engaging in entertainment services, and all activities related thereto, at the Club.

3.47 “Person” means any individual, corporation, partnership, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

3.48 “Plan of Allocation” means the plan for allocating the Net Settlement Fund between and among Settlement Class Members as set forth in Article VII and as approved by the Court.

3.49 “Posted Notice” means a notification which is to be posted in the Entertainer dressing room of each Club announcing the existence of the Cash Settlement Pool and the ability of Entertainers to seek remuneration therefrom, in a form as attached as **Exhibit C**.

3.50 “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order and thus: (a) preliminarily approves the Settlement, including the Exhibits hereto, and (b) enters an order providing for distribution of the Class Notice to the Class Members, an opportunity to be excluded, or to Opt Out, from the Settlement, and an opportunity to submit timely objections to the Settlement; and setting the Fairness Hearing.

3.51 “Preliminary Approval Order” means the order that the Class Representative will seek from the Court. Entry of the Preliminary Approval Order shall constitute preliminary approval by the Court of the Settlement as embodied by this Agreement.

3.52 “Released Claims” shall be construed as broadly as possible to effect complete finality over the Action and the Claims asserted therein. “Released Claims” include the General Released Claims, the Settlement Class Members’ Released Claims, and the Participating Class Members’ Released Claims.

3.53 “Proportional Distribution Claim” means the submission made by a Class Member using the Claim Form wherein she requests to receive her Monetary Settlement Benefit under this Agreement in the form of a one-time cash payment.

3.54 “Proportional Distribution Claimant” means a Class Member who has submitted a Valid Proportional Distribution Claim.

3.55 The “Proportional Distribution Fund” means 66.6% of the Cash Pool. Such distributions will be based on the number of shifts during which each Claimant’s performed at Defendant’s Club in proportion to the number of shifts of all other Claimants during the Class Period. The determination of each Claimant’s credited tenure shall be made by the Claims Administrator based on all available evidence, including: any documents produced by Defendants; and the claim forms and any documents submitted by Claimants. The Claims Administrator may consult with Class Counsel regarding the tenure determinations, but the ultimate authority to decide a Claimant’s proportional share of Proportional Distribution Fund will lie exclusively with the Claims Administrator.

3.56 “Released Defendants” means Ferny Properties, LLC, Kerry Fernholz, an Mary Fernholz, together with each and every one of their respective current, former, and future: Owners (either direct or indirect, including but not limited to partners, shareholders, members, parent companies, holding companies, trusts and/or trustees), officers, directors, managers, employees, agents, representatives, non-Entertainer contractors, insurers, reinsurers, attorneys (including but not limited to Defense Counsel), auditors, accountants, bookkeepers, experts, subsidiaries, affiliates, divisions, licensees, licensors, consultants, heirs, executors, personal representatives, predecessors and successors in interest, and assigns, as well as any benefit plans sponsored or administered by any of the proceeding individuals and entities.

3.57 “Settlement” means the compromise and settlement of the Action embodied in this Agreement.

3.58 “Settlement Administrator” means an independent settlement administrator mutually agreed upon by the Parties and to be appointed by the Court.

3.59 “Settlement Check” means any check issued by the Settlement Administrator to a Settlement Class Member for her Settlement Payment, and/ or her Supplemental Settlement Payment.

3.60 “Settlement Class” means all Class Members who, during the Class Periods, have Performed as an Entertainer at the Club pursuant to a Dancer Contract, and who have not timely and properly excluded themselves from the Settlement as provided for in Sections 10.3-10.5 of this Agreement.

3.61 “Settlement Class Member” means any Class Member who has not timely and properly excluded herself from the Settlement (by submission of an Opt Out Form) as provided for in Sections 10.3-10.5 of this Agreement.

3.62 “Settlement Class Members’ Released Claims” means, for a Settlement Class Member, any and all Claims from the beginning of her applicable Class Period(s) up to and including the date the Judgment becomes Final, that are asserted in the Action or that are to be asserted in the Action by way of the amendments contemplated in this Agreement, and any and all Claims of any conceivable kind or nature whatsoever that are based on such pleadings or that are reasonably related thereto (except only for FLSA Claims), whether known or unknown, whether fixed or contingent, whether asserted or unasserted, and whether filed or unfiled, at law, in equity or otherwise, and specifically including:

(a) Claims for unpaid wages (including, without limitation, claims for minimum wage, regular wages, overtime, final wages, calculation of the correct overtime or regular rate, and meal period and rest period payments/premiums), uniform/costume costs and associated cleaning expenses, expense reimbursements, interest, and penalties;

(b) Claims to recover any alleged tip or other payment;

(c) Claims for expense reimbursement;

(d) Any and all Claims pursuant to Title 34 of the North Dakota Century Code;

(e) Claims for liquidated, punitive, and/or exemplary damages based upon Defendants' wage policies and/or their employment classification of Entertainers;

(f) Any other employment, wage, or labor-related Claims that could be brought under any statute, regulation, or otherwise against the Released Defendants, or against any one or group of them, that arise out of, relate to, are associated with, are based upon, or concern, in any way, manner, regard or fashion whatsoever, any act or omission as pled in the First Amended Complaint for Settlement that occurred during the Class Periods, including but not limited to any Claims under any legal or equitable theory as a result of the alleged violation of any state or federal law or regulation, Claims brought pursuant to breach of contract, Claims brought pursuant to common law, Claims of unjust enrichment and/or *quantum meruit*.

(g) Claims of retaliation related to the claims otherwise described in this section.

(h) Claims for attorneys' fees and costs; and

(i) All Claims, including common law claims, arising out of or related to the statutory causes of action described in this Section 3.62.

3.63 “Settlement Consideration” means the total and aggregate financial benefit conferred on the Settlement Class Members through the Cash Payments, Enhancement Payments, and changes to the Defendants’ business practices, all which confer a direct financial benefit on Settlement Class Members; together with the Attorney Fee and Expense Award and the Administrative Costs.

3.64 “Supplemental Cash Payment” means an additional payment to a Participating Class Member made pursuant to Section 7.7 in order to extinguish the Net Settlement Fund as a result of undeliverable or non-Negotiated Settlement Checks.

IV. SUBMISSION OF THE SETTLEMENT AND THIS AGREEMENT TO THE COURT FOR REVIEW AND APPROVAL, AND CONDITIONAL CERTIFICATION OF PROPOSED CLASS FOR SETTLEMENT PURPOSES

4.1 Submission of Settlement for Court Approval. Promptly upon completing drafting and signing this Agreement, the Parties shall submit it to the Court for preliminary review and approval.

4.2 Provisional Certification of the Class. For purposes of settlement only, the Plaintiffs will seek provisional certification of the Class as a collective action pursuant to 29 U.S.C. § 216(b) and as a Rule 23 Class. Each Party agrees that neither this certification nor Defendants not opposing the same shall not be used by any Person for any purpose whatsoever in any legal, administrative, or arbitral proceeding. Such matters may only be submitted in a proceeding to enforce the terms of this Agreement.

4.3 Limitations of Provisional Certification. Defendants do not agree to refrain from opposing certification of the Class for any purpose other than to effectuate the Settlement of this Action. The Parties acknowledge and agree that Defendants’ non-opposition to provisional

certification, for purposes of this Settlement only, does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to the Named Plaintiffs or to any of the Class Members, or an acknowledgement or concession of the propriety of such Class/collective certification.

4.4 Cooperation of the Parties. The Parties shall act in good faith to effectuate each and every term of this Agreement to obtain Final Approval of this Agreement (including providing Class Notice under the FLSA and Rule 23), to take all acts so that the Judgment becomes Final, and to secure a prompt, complete, and final resolution of the Settlement of this Action.

4.5 Actions to Accomplish Settlement. Solely for purposes of implementing this Agreement and effectuating the proposed Settlement, the Parties agree and stipulate that the Parties shall request a Preliminary Approval Order preliminarily approving the Settlement. The Parties shall seek entry of a preliminary Approval Order that, among other things: Grants leave, if necessary, to file an additional amended complaint for Settlement and to preliminarily certify the Class for settlement purposes only; approves Ella Metcalf as Class Representative; appoints Class Counsel to represent the Settlement Class, and appoints the Settlement Administrator; approves the Class Notice, the Posted Notice, and the Class Notice plan embodied in the Agreement, and approves them as consistent with 29 U.S.C. § 201, *et seq.*, Rule 23, and due process; sets out the requirements for Class Members to be able to exclude themselves from the Settlement and for Settlement Class Members to object to the terms of the Settlement, as provided for in this Agreement; provides that certification and all actions associated with certification are undertaken on the condition that the certification and other related actions shall be automatically vacated if this Agreement is terminated or if the Settlement does not become Final, all as provided in this Agreement; preliminarily enjoins all Class Members and their Legally Authorized Representatives, unless and until they submit a timely request for exclusion from the Settlement

pursuant to this Agreement, from filing, participating in, or proceeding with, any other suit or non-administrative proceeding based on the Released Claims, or from attempting to effect an Opt Out from the Settlement as a group, class, or subclass of individuals; and schedules the Fairness Hearing.

4.6 Court Submissions. Any of the Parties, Class Counsel, Defense Counsel, and any person objecting to this Agreement, may file with the Court, as directed by the Court in its Preliminary Approval Order, a written brief setting forth their respective positions regarding the fairness of the Settlement. All submissions to the Court shall comply with the provisions set forth in the applicable rules of the Court, as well as the dates established by the Court in its Preliminary Approval Order.

4.7 The Fairness Hearing. At the Fairness Hearing, the Class Representative shall request entry of the Final Approval Order and the Judgment; the terms of which shall be agreed upon by the Parties. The entry of the Final Approval Order and the Judgment by the Court is a material condition of the Settlement and of this Agreement, and shall order, among other things, that the Court:

- (a) finally approves the Settlement as fair, reasonable, and adequate, within the meaning of Rule 23 and due process, and directs its consummation pursuant to the terms of this Agreement;
- (b) finds that Class Counsel and the Class Representative adequately represent the Settlement Class for the purpose of entering into and implementing this Agreement;
- (c) confirms the appointment of the Settlement Administrator and finds that the Settlement Administrator has fulfilled its duties under the Settlement;

(d) finds that the Class Notice: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and their right to exclude themselves from, or object to, the proposed Settlement and to appear at the Fairness Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all Persons entitled to receive notice; and (iv) met all applicable requirements of Rule 23, due process, and any other applicable rules or law;

(e) approves the Opt Out List and determines that the Opt Out List is a complete list of all Class Members who have timely requested exclusion from the Settlement and who, accordingly, shall neither share in nor be bound by the Final Approval Order and Judgment;

(f) dismisses the Action and the Metcalf Action on the merits with prejudice and without fees or costs, except as provided in this Agreement;

(g) directs that the Final Approval Order and Judgment shall be final and entered forthwith;

(h) without affecting the finality of the Final Approval Order and the Judgment, reserves and retains jurisdiction over the Class Representative, the Settlement Class, and Defendants as to all matters concerning the administration, consummation, and enforcement of this Agreement, including but not limited to those provisions relating to the extension of injunctive relief into the future as provided for herein;

(i) adjudges that the Class Representative, the Settlement Class Members, and the Participating Class Members, as well as their Legally Authorized Representatives, together with anyone claiming through them or acting or purporting to act for them, in their

interest, on their behalf, or for their benefit, regardless of whether they received actual notice of the proposed Settlement or not, have conclusively compromised, settled, discharged, and released the General Released Claims (in the case of the Class Representative), the Settlement Class Members' Released Claims (in the case of the Settlement Class Members), and the Participating Class Members' Released Claims (in the case of the Participating Class Members) against the Released Defendants, and are bound by the provisions of this Agreement;

(j) declares this Agreement and the Final Approval Order and Judgment to be binding on, and have *res judicata* and preclusive effect in regard to, all pending and future lawsuits or other proceedings: (i) that encompass the General Released Claims and that are maintained by or on behalf of a Class Representative or her Legally Authorized Representatives, or anyone claiming through her or acting or purporting to act for her, in her interest, on her behalf, or for her benefit; (ii) that encompass the Settlement Class Members' Released Claims and that are maintained by or on behalf of any Settlement Class Member or her Legally Authorized Representatives, or anyone claiming through her or acting or purporting to act for her, in her interest, on her behalf, or for her benefit, regardless of whether the Settlement Class Member or other such Person previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Settlement Class Members' Released Claims and even if such Settlement Class Member never received actual notice of the Action or this proposed Settlement; and iii) that encompass the Participating Class Members' Released Claims and that are maintained by or on behalf of any Participating Class Member or her Legally Authorized Representatives, or anyone claiming through her or acting or purporting to act for her, in her interest, on her

behalf, or for her benefit, regardless of whether the Participating Class Member previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Participating Class Members' Released Claims;

(k) permanently bars and enjoins the Class Representative and all other Settlement Class Members from: (i) filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the General Released Claims (in the case of the Class Representative, the Settlement Class Members' Released Claims (in the case of the Settlement Class Members), and the Participating Class Members' Released Claims (in the case of the Participating Class Members); and (ii) organizing Settlement Class Members or Participating Class Members into a separate group, class, or subclass for purposes of pursuing, as a purported class action, any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations), based on the Settlement Class Members' Released Claims or the Participating Class Members' Released Claims;

(l) determines that the Agreement and the Settlement provided for herein, and any proceedings taken pursuant thereto, are not and should not, in any event, be offered, received, or construed as evidence, or a presumption, concession, or an admission by any Party, of liability or non-liability, the certifiability or non-certifiability of a litigation class, or any misrepresentation or omission in any statement or written document approved or made by any Party; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement;

(m) certifies the Class and orders Final Approval of the proposed Settlement, and provides that all actions associated with them are undertaken on the condition that such certification and Final Approval shall be vacated if this Agreement is terminated or disapproved in whole or in part by the Court, or by any appellate court and/or other court of review, or if Defendants invoke the right to terminate the Settlement as provided herein, in which event this Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability, of any misrepresentation or omission in any statement or written document approved or made by any Party, or of the certifiability of a litigation class;

(n) authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of this Agreement, including all Exhibits hereto, as: (i) shall be consistent in all material respects with the Final Approval Order, and (ii) do not limit the rights of Settlement Class Members; and

(o) includes such other and further provisions to which the Parties expressly consent in writing that are consistent with the terms of this Agreement.

4.8 Request to Approve Plan of Allocation. At the Fairness Hearing and as a part of the Final Approval of this Settlement, Class Counsel will also request approval of the Plan of Allocation set forth in Article VII.

4.9 Request to Approve Attorney Fee and Expense Award. At the Fairness Hearing, Class Counsel may also request entry of an order approving Class Counsels' application for the Attorney Fee and Expense Award and for Enhancement Payments to the Class Representative. In no event shall Defendants otherwise be obligated to pay for

any attorneys' fees or expenses or Enhancement Payments. The disposition of Class Counsels' application for an Attorney Fee and Expense Award, and for Enhancement Payments, is within the sound discretion of the Court. Any disapproval or modification of such applications by the Court shall not: (a) affect the enforceability of the Settlement or this Agreement, (b) provide any of the Parties with the right to terminate the Settlement or this Agreement, or (c) impose any obligation on the Defendants to increase the consideration extended in connection with the Settlement.

V. CLASS NOTICE

5.1 Information to be Supplied by Defendants. Within thirty (30) days of the entry of the Preliminary Approval Order by the Court, Defendants will provide the Settlement Administrator, to the extent available in Defendants' records, the following information:

5.1.1 Each Class Member's legal name;

5.1.2 Each Class Member's last known address from the Class Member's last (most recent) Dancer Contract;

5.1.3 To the extent available, each Class Member's last known email address; and

5.1.4 The dates for each shift during which each Class Member performed at Defendants' Club, as maintained in the ordinary course of its business.

5.2 Confidentiality of Information. The Parties agree that the information to be disclosed pursuant to Section 5.1 shall be deemed CONFIDENTIAL INFORMATION in accordance with Section 14.1. The Settlement Administrator shall be required to enter into an agreement to keep such information confidential.

5.3 Contents of the Class Notice and Posted Notice. The Class Notice and Posted Notice shall be in forms attached as *Exhibits B and C* respectively; shall contain all information required by law.

5.4 The Settlement Administrator's Obligations and Duties. The Settlement Administrator shall, in accordance with the Section immediately below, be responsible for the mailing of the Class Notice Documents; adjudicating all disputes of Settlement Claims relating to the eligibility for, or the proper amount of, Cash Payments; the Enhancement Payments, and the Attorney Fee and Expense Award from the Cash Settlement Pool; remitting Cash Payments from the Net Settlement Fund to Class Members; and sending appropriate tax information and documents related to those payments.

5.5 Effectuation of Class Notice. Within twenty (20) days of receipt of the Class Member information identified in Section 5.1, the Settlement Administrator shall mail, and email where available, the Class Notice to each Class Member. The envelope shall include the Class Notice.

5.6 Return of Class Notice. If the Class Notice mailed to a Class Member is returned within twenty-one (21) days of the initial mailing, with a forwarding address provided by the Postal Service, the Class Notice will be re-sent by the Settlement Administrator to the forwarding address within seven (7) days of return. If no forwarding address is provided by the Postal Service, the Settlement Administrator shall perform a skip trace on the Class Member and, if an alternative address is found, the Class Notice will be re-sent by the Settlement Administrator to the alternative address within seven (7) days of discovery of the additional address. Irrespective of these matters, a timely (in accordance with Section 11.3) Opt Out Form must have been submitted in order for a Class Member to have properly Opted Out.

5.7 Posted Notice. In addition to the mailed and emailed notice identified in Section 5.5, Defendants shall post the details of the Cash Settlement Pool (“Posted Notice”) and use their best efforts to have the Posted Notice prominently displayed in the dormitory leased by Defendants from Ferny Holdings, LLC. The Club shall prominently display the Posted Notice in the Club’s Entertainer dressing room. The Posted Notice shall remain posted until the Opt Out Period expires.

5.8 Class Notice Verification. No later than thirty (30) days after the Settlement Administrator has completed the effectuation of the Class Notice as set forth in Sections 5.5 and 5.6, and before the Fairness Hearing, the Parties shall file with the Court a notice of compliance stating that the Class Notice has been mailed and emailed (when available) to the Class Members.

VI. SETTLEMENT CONSIDERATION

6.1 The Value of the Settlement Consideration. The Cash Settlement Pool shall be in the amount of Two Hundred Thousand Dollars (\$200,000.00), consisting of Cash Payments, Enhancement Payments, the Attorney Fee and Expense Award, and Administrative Costs. Under no circumstances shall Defendants be responsible for making payments or other remunerations of any kind, or for extending credits in a manner, that confers an aggregate financial benefit on the Settlement Class Members, on Class Counsel, and on the Settlement Administrator, in excess of the amount of the Cash Settlement Pool. In addition, monetary settlement value is also conferred by certain agreed-upon changes to Defendants’ business practices set forth in Article VIII that may impart a direct financial benefit on some Settlement Class Members.

6.2 Composition of the Cash Settlement Pool. The Cash Settlement Pool shall consist of the following:

6.2.1 Net Settlement Fund: The sum remaining after reduction for the Enhancement Payments, the Attorney Fee and Expense Award, and the Administrative

Costs, will be made available to provide cash compensation to Class Members in the form of Cash Payments.

6.2.2 Enhancement Payments: Defendants shall pay, out of and as part of the Cash Settlement Pool, the Enhancement Payments as ordered by the Court in the Final Approval Order. Plaintiffs will seek and Defendants will not object to Enhancement Payments totaling for all Persons, an amount equal to or less than five thousand dollars (\$5,000). Enhancement Payments shall be considered non-wage income for which an IRS Form 1099 will be issued by the Defendants, as required by law, to the Person receiving such a payment.

6.2.3 Attorney Fee and Expense Award: Defendants shall pay, out of and as part of the Cash Settlement Pool, to Class Counsel, in order to compensate them for their work in obtaining the Settlement Consideration as set forth herein, an amount as ordered by the Court in the Final Approval Order, which shall include attorneys' fees and Litigation Expenses. Defendants will take no position as to a request for an Attorney Fee and Expense Award that does not exceed thirty-three and one-third percent (33-1/3%) Cash Settlement Pool, plus reasonable litigation expenses.

6.2.4 Administrative Costs: Defendants shall pay to the Claims Administrator, out of and as part of the Cash Settlement Pool, the Administrative Costs.

6.3 Payment of the Cash Settlement Pool. The Cash Settlement Pool shall be paid by the Defendants as follows:

6.3.1 Defendants shall fund Cash Pool within thirty (30) days after entry by the Court of the Preliminary Approval Order. Defendants shall fund the Cash Pool by payment to Settlement Administrator.

6.3.2 The payment of the Cash Settlement Pool shall be inclusive of all payments, costs, and fees required to be remitted by the Defendants pursuant to the Settlement and this Agreement; all to be paid without reversion to Defendants, except as provided for in Article XIII or otherwise in the event of the termination of this Agreement.

6.4 Timing of Payments from the Cash Settlement Pool. Distributions shall be made by the Settlement Administrator for the Enhancement Payments, and the Attorney Fee and Expense Award, within seven (7) days of the Judgment becoming Final; and for the Cash Payments, within thirty (30) days of the Judgment becoming Final.

VII. PLAN OF ALLOCATION AND DISBURSEMENTS OF CASH PAYMENTS

7.1 Equal Distribution: Class Members (including Class Representative) shall partake in equal shares of the Equal Distribution Fund, which consists of 33.3% of the Cash Settlement Fund.

7.2 Proportional Settlement Claims: A Class Member who wishes to participate in the Proportional Settlement Fund shall comply with the following procedures:

7.2.1. Claim form: In order to receive a Cash Payment from the Proportional Settlement Fund, a Class Member must Properly Complete the Claim Form to obtain their Monetary Settlement Benefit in the form of a Cash Payment and must Timely Submit the Claim Form to the Settlement Administrator before the expiration of the Election Period. Class Members who do not Timely Submit a Properly Completed Claim Form to the Settlement Administrator (by having the same mailed and postmarked prior to the expiration of the Election Period) will not be entitled to receive a Cash Payment from the Proportional Settlement Fund.

7.2.2. Claim Forms Not Properly Completed. In the event that the Settlement Administrator receives, prior to the expiration of the Election Period, a Claim Form from a Class Member that is not Properly Completed, the Settlement Administrator shall immediately e-mail a copy of that Claim Form to both Class Counsel and to Defense Counsel, who shall be required to cooperate in order to determine whether enough information has been provided, or can be provided, to render the Claim Form a Valid Proportional Settlement Claim. If additional information is needed, the Settlement Administrator shall immediately request the same from the Class Member. Unless Class Counsel and Defense Counsel otherwise jointly conclude, before the expiration of the Election Period, that the Class Member provided sufficient information to have the document constitute a Properly Completed Claim Form, or the Settlement Administrator receives additional information so as to consider the document to constitute a Valid Proportional Settlement Claim, the Claim Form shall be deemed invalid for all purposes hereunder and such Class Member shall not be entitled to a Cash Payment from the Proportional Settlement Fund.

7.3 Election Reporting of Claims. Within seven (7) calendar days of the end of the Election Period, the Settlement Administrator shall furnish to Class Counsel and Defense Counsel a copy of the Valid Proportional Settlement Claims.

7.4 Confidentiality of Information. The Parties agree that the information to be disclosed pursuant to Section 7.2 shall be deemed CONFIDENTIAL INFORMATION in accordance with Section 14.1. Notwithstanding these restrictions, the Settlement Administrator may use the information provided by Defendants. to determine the amount of each Class Member's

Settlement Payment. The Settlement Administrator shall be required to enter into an agreement to keep such information confidential pursuant to the terms of this Section.

7.5 Determination of the Value of Cash Payments. Proportional Settlement Fund Claimants shall be paid a pro-rata share of the available Proportional Settlement Fund based on the number of shifts during which they Performed at the Club during the Class Period relative to all other Proportional Settlement Fund Claimants. The pro rata share of the Proportional Settlement Fund will be determined by the Settlement Administrator based on one point per shift during the Class Period.

7.6 Distribution of the Net Settlement Fund. The Settlement Administrator shall be directed to allocate, and make payments from, the Net Settlement Fund. Upon the determination by the Settlement Administrator of the amount remaining from the Settlement Pool to constitute the Net Settlement Fund, the specific amount of each Settlement Payment as determined by Sections 7.1-7.2, and upon the Judgment becoming Final, the Settlement Administrator shall make Cash Payments, or portions thereof, in accordance with the provisions of Sections 7.1-7.2. All Settlement Checks shall contain the following endorsement: “By cashing this check, I Consent to Join (opt in to) the underlying Action and to release any and all Claims that I may have under the Fair Labor Standards Act.”

7.7 Returned or Uncashed Settlement Checks. In the event that any Settlement Checks are returned to the Settlement Administrator after the first round of Settlement Checks that cannot be resent with a valid address, the Settlement Administrator shall retain such funds in the account for the Settlement Pool for a period of sixty (60) days following return of the check. If, after the expiration of that sixty (60) day period, the Settlement Class Member has not requested the Settlement Check, those funds shall be considered to be part of the remaining Net Settlement Fund.

If settlement checks are not Negotiated within one hundred twenty (120) days of the original mailing of the first and second round of Settlement Checks, those funds shall be considered part of the remaining Net Settlement Fund. On the second round of Settlement Checks, Settlement Checks shall only be issued to those Settlement Class Members whose Settlement Checks were Negotiated within one hundred and twenty (120) days of the previous round of Settlement Checks. Before the second round of Settlement Checks, the Cash Payments to be made shall be calculated in accordance with Section 7.2 as among those Settlement Class Members who Negotiated checks within one hundred and twenty (120) days of the original mailing. Any funds remaining Net Settlement Fund one hundred twenty (120) days after the second round of Cash Payments are remitted by the Settlement Administrator to Settlement Class Members (either as a result of Settlement Checks and/or Supplemental Cash Payments that are sent out but returned as undeliverable, or Settlement Checks or Supplemental Settlement Checks that are not Negotiated within one hundred twenty (120) days of the mailing of the check), then the Settlement Administration shall remit all such remaining funds to the charity identified in Section 7.9.

7.8 Tax Considerations of Settlement Payment Distributions. The Class Representative and each Settlement Class Member who receives and cashes a Settlement Payment acknowledge and agree that the Cash Payments, and Supplemental Cash Payments made to them pursuant to this Article VII do not constitute “wages” within the meaning of § 3111(a) of the Internal Revenue Code, any other applicable provisions therein, or any applicable state tax or revenue code. A Form (or Forms, as applicable) 1099-MISC shall be issued, as required by law, by the Defendants, at their sole cost, to each Settlement Class Member reflecting the payments made in accordance with this Agreement, and copies of said forms shall be duly filed with the United States Internal Revenue Service and with the North Dakota taxing authorities. Class Counsel represent that they

are providing no tax advice to Settlement Class Members in regard to the tax reporting and remittance obligations that they may have in regard to the Cash Payments conveyed to them pursuant to the terms of this Agreement.

7.9 Uncollected Settlement Pool Funds. If any uncashed or non-Negotiated Settlement Checks or unpaid funds remain in the Settlement Pool, then the remaining amount contained in the Settlement Pool bank account shall be paid to a charitable organization. The organization selected by the Parties is the American Cancer Society – Making Strides Against Breast Cancer.

7.10 Excess Claims. There can be no excess Cash Payments under the scoring system because Settlement Class Members shall share 100% of the available Net Settlement Fund on a pro-rata basis following payment of the Enhancement Payments, the Attorney Fee and Expense Award, and the Administrative Costs therefrom.

7.11 Distribution of Settlement Checks. Within thirty (30) days of issuing Settlement Checks, the Settlement Administration shall provide Class Counsel and Defense Counsel with copies of all Settlement Checks remitted. Within one hundred eighty (180) days of the mailing of Settlement Checks, including Supplemental Cash Payments, the Settlement Administration shall provide Class Counsel and Defense Counsel with copies of all Negotiated Settlement Checks, and shall thereafter remit to the Class Counsel and Defense Counsel, within thirty (30) days of the receipt of any further Negotiated Settlement Checks, copies of such other Negotiated Settlement Checks. The Negotiated Settlement Checks shall be designated as CONFIDENTIAL INFORMATION in accordance with Section 14.1.

VIII. DEFENDANTS' CHANGES OF BUSINESS PRACTICES, WHICH WILL CONFER A DIRECT AND SUBSTANTIAL FINANCIAL BENEFIT TO THE SETTLEMENT CLASS

8.1. Within ninety (90) days of this Effective Date of this Agreement, Defendants shall effectuate the following changes to their business practices:

8.1.1. Dancer Bookings: Entertainers may book dates to perform at the Club by phone, text, or email. The Club shall promptly update any agreed-to booking to an internet-accessible calendar. The Club shall respond to booking requests within 48 hours provided the entertainer has a current Dancer Contract with the Club.

8.1.2. Personal Performances: Personal performances (aka couch dances or dances in the VIP room(s)) shall be paid by customers at prices set by the Club. The fees for those dances will be: (a) for couch dances, \$5 from the customer to the Club for access to the couch area for up to three (3) dances and \$20 from the customer to the Entertainer for each performance (lasting approximately 3 minutes); and (b) for VIP room performances, \$25 from the Customer to the Club for each 15 minutes and \$100 from the Customer to the Entertainer for the same 15-minute period. The Club may raise any of the forgoing fees by \$5 on each anniversary of the Effective Date of this Agreement.

8.1.3. Rental Fees: An Entertainer shall pay the Club as flat rental, license, or appearance fee based upon the time the Entertainer is completely ready to begin her booking: (a) Free/\$0 if the Entertain is ready to begin her booking by 5:30 p.m.; (b) \$50 if the Entertainer is ready to begin her booking at any time after 5:30 p.m.: and (c) an additional \$50 if the entertainer chooses to leave the Club before 1:30 a.m. The Club shall not be required to permit an entertainer to commence a booking after 7:30 p.m. The Club may raise any of the forgoing fees by \$5 on each anniversary of the Effective Date of this Agreement.

8.1.4. Charge Card/Chargebacks: The Club may, at its option, retain charge card funds for transactions of \$1,500 or more for a period of no longer than thirty (30) days. If a customer

initiates a chargeback during this period the funds shall continue to be held by the Club until the chargeback is resolved. If the chargeback is resolved in the Club's favor, the Club shall disperse the funds within seven (7) days. If the chargeback is resolved in favor of the customer, the Club shall not be obligated to remit any subject funds to the Entertainer.

8.1.5. Charge Card Fees: The Club shall not reduce the amount received by Entertainer via charge card transactions with Club for any processing or related fee, amount, or percentage.

8.1.6. No Mandatory Tip-Outs: No Entertainer shall be required to "tip out" to or to tip pool with any employee of the Club, including but not limited to management, DJs, security persons, bartenders, servers, or other Entertainers.

8.1.7. No Minimum Heel Height: Entertainer's shall not be required to wear shoes of any particular style or heel height provided such footwear provided footwear meets any applicable health code or other legal requirements and is within the industry standard for professional entertainers.

8.1.8. Lockers: The Club shall furnish lockers and combination locks on-site for use by Entertainers, free of charge.

8.1.9. No limitation of Liability: No past, present, or future Dancer Contract shall require an Entertainer to waive or hold harmless the Club of liability arising out of the gross negligence of the Club, its employees, or third parties under Defendants' hire or control.

8.1.10. Right to Refuse: An Entertainer shall have the right to refuse to perform for any customer whether such request relates to a personal performance, a performance on stage, or otherwise, including group or "bachelor party" requests. Entertainers may be nonetheless required to perform in rotation on stage, provided the entertainer is not engaged in a paid-for personal performance.

8.1.11. Other Charges: Unless otherwise agreed in writing, no entertainer shall be subject to any deduction or fee by the Club for use of any off-site dormitory or living quarters.

8.2. Notice of Changes to Business Practices: Within ninety (90) days of this Effective Date of this Agreement, Defendants shall post notices of the changes to business practices set forth in Section 8.1. Such notice shall be displayed prominently, and Defendants shall use their best efforts to cause such notice to be posted at dormitory traditionally used by Entertainers performing at the Club.

8.3. Expiration and Changes to This Article: In recognition of the fact that the business and regulatory landscape may significantly change over time, the Parties agree that the mandatory obligations upon the Club as set forth in this Article VIII, including all Sections and subsections thereof, shall expire upon the earliest of the following two dates: (i) three (3) years after the Effective Date; or (ii) the date upon which there are changes to any applicable statute, regulation, or other law that Defendants reasonably believe would require a modification to any of the provisions set forth in this Article, including all Sections and subsections thereof, in order to comply with such changes to the applicable statutes, regulations, or laws.

8.4. Right to Modify the Terms of this Article: Defendants maintain the right to make further changes to their business practices so long as such changes do not materially and adversely undermine the non-monetary terms set forth in this Article. In addition, Defendants maintain the right to make changes to any of the non-monetary terms set forth in this Article IX if changes to those terms are warranted by a change in statutory, regulatory or common law that is material to the classification of independent contractors/non-employees and/or employees.

8.5. Injunctive Relief: In the Final Approval Order, the Court shall grant injunctive relief to compel the Defendants to comply with all terms of this Article VIII.

IX. ATTORNEY FEE AND EXPENSE AWARD, ENHANCEMENT PAYMENTS, AND ADMINISTRATIVE COSTS

9.1 Attorney Fee and Expense Award. Defendants shall pay, out of and as part of the Cash Settlement Pool, through the Settlement Administrator, and to Class Counsel, in order to compensate them for their work in obtaining the Settlement Consideration as set forth herein, an amount as ordered by the Court in the Final Approval Order, which shall include attorneys' fees and Litigation Expenses. Class Counsel has indicated that they will submit a request for an Attorney Fee and Expense Award that does not exceed thirty-three and one-third percent (33-1/3%) of the Cash Settlement Pool, plus reasonable litigation expenses.

9.2 Allocation of Attorney Fee and Expense Award, and Court Approval of the Same. Subject to Court approval, Class Counsel shall, within their sole discretion, allocate the Attorney Fee and Expense Award amongst the various firms that constitute Class Counsel. As directed by the Court's Preliminary Approval Order, Class Counsel shall apply to the Court for an award of attorneys' fees and costs as set forth in this Agreement. In no event shall the Defendants be requested or required to pay any attorneys' fees, costs, or expenses in excess of those set forth in this Agreement. No attorney shall be entitled to any award or allocation of attorneys' fees or costs prior to satisfying all the following conditions:

(a) Filing a petition for attorneys' fees and/or costs with the Court as set forth in Section 9.1 and Court approval of the same.

(b) Obtaining their clients' consent to be bound by the terms and conditions of this Agreement without objection.

9.3 Payment of the Attorney Fee and Expense Award. Defendants shall pay to Class Counsel, by way of remittance from the Settlement Administrator out of the Settlement Pool, the

Attorney Fee and Expense Award as determined and ordered by the Court, through checks issued to Class Counsel in allocated amounts as determined by the Class Counsel. The Attorney Fee and Expense Award shall be paid according to the terms of Section 6.2.3.

9.4 Litigation Expenses. With the exception of the payments for the Attorney Fee and Expense Award made pursuant to Section 9.1, all other Litigation Expenses incurred in connection with prosecuting this Action shall be borne exclusively by Class Counsel. Under no circumstances shall Defendants be responsible for Litigation Expenses that exceed the amount of the maximum Attorney Fee and Expense Award provided for herein.

9.5 Enhancement Payments. Class Counsel may apply to the Court for an incentive award for the Class Representative (to be in addition to compensating them for their portion of the overall Settlement proceeds available to the Settlement Class), in the amount of five thousand dollars (\$5000.00), will be in recognition of the Class Representative' time, efforts, and expenses incurred in coming forward as a Class Representative, assisting in the prosecution of this Action, and securing the Settlement as embodied in this Agreement. Enhancement Payments as ordered by the Court shall not exceed, in the aggregate, six thousand dollars (\$6,000.00), with Class Counsel reserving the right to request \$1,000 be paid to the estate of Plaintiff Tompkins, if appropriate and practicable. Enhancement Payments shall be considered non-wage income for which an IRS Form 1099 will be issued by the Defendants, as required by law, to the Class Representative receiving such a payment. Enhancement Payment shall be made in accordance with Section 6.2.2.

9.6 Administrative Costs. Defendants shall pay to the Claims Administrator, out of and as part of the Settlement Pool, the Administrative Costs in accordance with the terms herein.

X. OBJECTIONS AND OPT OUTS

10.1 Objections to Settlement. All objections to the Settlement must be in writing and must be filed with the Court in accordance with the Court's Preliminary Approval Order. All objections must be mailed to both Class Counsel and Defense Counsel.

10.2 Procedures for Objections. The procedures of objection shall be as set forth in the Preliminary Approval Order.

10.3 Opting Out of the Settlement. Any Class Member who wishes to be excluded from the Settlement must mail to the Settlement Administrator, at the address that is set forth in the Class Notice, a request for exclusion from the Settlement, personally signed by the Class Member or her Legally Authorized Representative and postmarked no later than sixty (60) days from the Notice Date (the Opt Out Form). The Settlement Administrator shall date-stamp the original of any Opt Out Form and serve copies on both Class Counsel and Defense Counsel via electronic mail and United States Mail within five (5) business days of receipt of any such statement. Class Counsel shall, prior to the Fairness Hearing, file copies of all timely submitted Opt Out Forms, not timely rescinded (*i.e.*, before the sixty (60) day period provided in this Section), with the Court UNDER SEAL in order to protect the confidentiality of those Class Members who have Opted Out.

10.4 Failure to Properly Opt Out, and Opt Out Limitations. Any Class Member who does not fully complete, personally sign, and timely mail (by postmark), pursuant to Section 10.3, notice of her intention to Opt Out of the Settlement will be deemed included as a Settlement Class Member in accordance with this Agreement. Class Representative waives any right to Opt Out of the Settlement.

10.5 Notification to Counsel of Opt Outs. Within ten (10) days following the conclusion of the Opt Out Period, the Settlement Administrator shall provide Class Counsel and Defense

Counsel with information, in the form of the Opt Out List, setting forth the total number of Opt Outs and the identities (which shall include the information required by the terms of this Agreement) of such individuals who have decided to Opt Out. The contents of the Opt Out List shall be designated as CONFIDENTIAL INFORMATION in accordance with Section 14.1, and shall be submitted by Class Counsel to the Court, before the Fairness Hearing, UNDER SEAL in order to protect the confidentiality of those Class Members who have Opted Out.

XI. RELEASES AND COVENANTS

11.1 Scope of Releases. The Released Claims against each and all of the Released Defendants shall be fully and finally released and dismissed with prejudice and on the merits (without an award of fees or costs to any Party other than as provided for in this Agreement) upon entry of the Final Approval Order and the Judgment becoming Final, provided that a Participating Class Member's Released Claims shall be fully and finally released as of her Settlement Check Filing Date.

11.2 Release of Released Defendants. The Class Representative, the Settlement Class Members, and the Participating Class Members, individually and on behalf of their heirs, estates, trustees, executors, administrators, representatives, agents, successors, and assigns, and anyone claiming through them, or acting or purporting to act on their behalf or for their benefit, hereby knowingly and voluntarily, forever release, relinquish, acquit, discharge, and hold harmless, each and every one of the Released Defendants from, and covenant not to sue each and every one of the Released Defendants regarding, each and every one of the General Released Claims (in the case of the Class Representative), the Settlement Class Members' Released Claims (in the case of the Settlement Class Members), and the Participating Class Members' Released Claims (in the case of the Participating Class Members); and they further agree that they shall not now or hereafter

initiate, maintain, or assert any General Released Claims (in the case of the Class Representative), any Settlement Class Members' Released Claims (in the case of the Settlement Class Members), or any Participating Class Members' Released Claims (in the case of the Participating Class Members) against the Released Defendants, or against any one or group of them, in any other court action or before any administrative body, tribunal, arbitration panel, or other adjudicating body. Without in any way limiting the scope of the releases described in this Section and in this Article XII, these releases cover, without limitation, any and all Claims for attorneys' fees, costs, or disbursements incurred by Class Counsel, any other counsel representing the Class Members or Settlement Class Members, the Class Representative or Settlement Class Members themselves, or by any one or group of them, in connection with or related in any manner to the Action, the Settlement of the Action, any other action or proceeding predicated upon the Release Claims, the administration of the Settlement, and/or the Released Claims, except to the extent otherwise specified in this Agreement. Notwithstanding the foregoing, Settlement Class Members retain the right to bring Claims based upon future violations of the terms of this Agreement.

11.3 Waiver of Released Claims. For and in return of the complete and full considerations, terms, covenants and conditions as set forth in this Agreement, the Settlement Class Members, the Participating Class Members, and the Class Representative, and each and every one of them, further specifically agree to waive each and all of their rights to bring any Claims against the Released Defendants, or against any one or group of them, at any time in the future arising out of, relating to, associated with, based upon, or concerning, in any way, manner, regard, or fashion whatsoever, the Settlement Class Members' Released Claims (for Settlement Class Members), the Participating Class Members' Released Claims (for Participating Class Members), and the General Released Claims (for Class Representative).

11.4 Release of FLSA Claims. With respect to those Claims that could be asserted under the FLSA, a Class Member's Negotiation of any Settlement Check or Supplemental Settlement Check shall be deemed as that Class Member's Consent to Join. The Negotiation by a Class Member of any Settlement Check or Supplemental Settlement Check shall fully, finally, and forever settle and release any and all such FLSA Claims and matters by her up until her Settlement Check Filing Date.

11.5 Claims Barred and Enjoined. The Class Representative, all Settlement Class Members and all Participating Class Members, shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released Defendants, or against any one or group of them, in any federal or state court or before any administrative body, tribunal, arbitration panel, or other adjudicating body, any and all of the General Released Claims (in the case of the Class Representative, any Settlement Class Members' Released Claims (in the case of the Settlement Class Members), and any Participating Class Members' Released Claims (in the case of the Participating Class Members)). The Court shall retain jurisdiction to enforce the provisions of this Section.

11.6 Waiver of Additional Compensation. Irrespective of the releases, waivers, and satisfactions set forth herein, if any court, tribunal, firm, third person or persons, business entity, or governmental entity, organization or agency brings, asserts, or assumes jurisdiction over any form of investigation, proceeding, lawsuit, Claim, charge or cause of action by, for or on behalf of any Settlement Class Member, Participating Class Member, or Class Representative, and/or in her interest or for her benefit, either in whole or in part, against the Released Defendants, or against any one or group of them, arising out of, relating to, associated with, based upon, or concerning, in any way, manner, regard, or fashion whatsoever, the Settlement Class Members' Released Claims, the

Participating Class Members' Released Claims, or the General Released Claims, such Settlement Class Member, Participating Class Member, or Class RepresentativeClass Representative, as applicable, shall not seek to enforce, recover or collect upon any damages, awards, remunerations, sanctions, penalties, costs and/or attorney fees assessed against the Released Defendants, or against any one or group of them, and shall reasonably cooperate with any request from the Released Defendants, at the Released Defendants' cost, to demand the dismissal, with prejudice, of any such investigation, proceeding, lawsuit, Claim, charge, or cause of action, and/or, as may be appropriate, her withdrawal therefrom (by way of example and without limitation, "withdrawal" includes, where applicable, a formal written request for withdrawal of, or non-participation in, an administrative proceeding, formally "opting"-out of an opt out class action lawsuit, and refraining from formally "opting"-in to an opt-in class or collective action matter). In the event, however, that any court, tribunal, or governmental entity, organization or agency should assess any damages, awards, remunerations, sanctions, penalties, costs, and/or attorney fees of any kind whatsoever against any Released Defendant beyond the relief provide for in this Agreement (in this Section, sometimes generally hereinafter simply referred to as "Award") arising out of, relating to, associated with, based upon, or concerning, in any way, manner, regard, or fashion whatsoever, the Settlement Class Members' Released Claims, the Participating Class Members' Released Claims, or the General Released Claims, the Settlement Class Members, Participating Class Members, and Class Representative, as applicable, and each and every one of them, agree to specifically waive entitlement to, and refrain from collecting upon, any such Award.

11.7 Sufficiency of Consideration. The Class Representative specifically represent that sufficient and adequate consideration is being conveyed to them through this Agreement and the Settlement to support the General Released Claims.

11.8 Satisfaction of Class Member Claims. The Class Representative specifically acknowledge that the payments made, and other considerations conveyed, by the Defendants as set forth herein, represent valid compromises, settlements, resolutions, accords, satisfactions, waivers, and releases of, as applicable, any and all Claims for FLSA or state wage/labor law coverage; minimum wage; overtime; liquidated, punitive, and/or exemplary damage payments; penalties; costs; attorney fees; and/or any other benefits allegedly due the Class Representative in regard to any matters or conduct arising from, relating to, associated with, based upon, or concerning, in any way, matter, regard, or fashion whatsoever, the General Released Claims.

11.9 Acknowledgement of Other Claims. The Class Representatives, and each and every one of them, specifically represent that to their own personal knowledge: A) There are no other lawsuits, Claims, charges, actions, proceedings, investigations, cause, and/or causes of actions of any kind whatsoever, other than those that are set forth in Plaintiffs' Complaint and in any amendment to be filed as part of this Settlement, or as otherwise previously disclosed in writing to the Defendants, pending or anticipated against the Released Defendants, or against any one or group of them, whether filed or unfiled, and whether civil or criminal, arising from, relating to, associated with, based upon, or concerning, in any way, manner, regard, or fashion whatsoever, the General Released Claims; B) that none of them have filed, been served with, or have any personal knowledge of any such matters; and C) that they have not participated in, or have provided assistance or cooperation to, such matters.

11.10 Release of Participating Class Members. Subject to any Claims that they may have for libel, slander, business disparagement, damage or destruction of property, assault and/or battery, or the like, each and every Released Defendant hereby, knowingly and voluntarily, releases, acquits, and forever discharges, each and every Participating Class Member (including the Class Representative and estate of Plaintiff Tompkins) and Class Counsel from any and all

Claims of every conceivable kind or nature whatsoever that they have, had, or may have, against the Participating Class Members, or against any one or group of them, whether known or unknown, whether fixed or contingent, whether asserted or unasserted, and whether filed or unfiled, at law, in equity, or otherwise, that arise out of, relate to, are associated with, are based upon, or concern in any way, manner, regard, or fashion whatsoever, the business arrangement that the Club had or have with the Participating Class Members and which occurred during the Class Periods and/or up until the Preliminary Approval Date of this Settlement, including but not limited to any Claim for breach of contract, any Claim purportedly arising out of a Dancer Contract, or any Claim that could exist as a result of the Participating Class Member's election to declare herself an "employee" under the terms of a Dancer Contract. Notwithstanding the foregoing, Defendants retain the right to bring Claims based upon future violations of the terms of this Agreement.

11.11 Performing in the Future at the Club. The Parties acknowledge that some of the Class Members are no longer Performing at the Club. Nothing in this Agreement shall require the Club to hire any Class Member not under contract at the time of execution of this Agreement in order to be able to Perform on its premises at any time in the future.

11.12 Knowing Execution. The Class Representative further acknowledges, agrees, and understands that: (a) she has read and understands the terms of this Agreement; (b) she has been advised in writing to consult with an attorney before executing this Agreement; (c) she has obtained and considered such legal counsel as she deems necessary; and (d) she has been given twenty-one (21) days to consider whether or not to enter into this Agreement (although she may elect not to use the full 21 day period at his/her option).

11.13 Non-Assignment of Claims. Each Class Representative represents and agrees that she has not and will not assign any of her General Released Claims to any other person or entity.

These representations shall survive the execution of this Agreement and the approval by the Court of the Settlement contemplated herein.

11.14 Dismissals. Subject to Court approval, the Class Representative and all Settlement Class Members shall be bound by this Agreement, and all of their Released Claims shall be dismissed with prejudice and fully and forever released and discharged, even if such Person(s) never received actual notice of the Action or this Settlement.

XII. TERMINATION OF SETTLEMENT

12.1 Events Permitting Termination. This Agreement and the Settlement shall terminate and be canceled within ten (10) business days of the mailing of notification if one of the Parties provides such written notification of an election to terminate this Agreement and the Settlement based upon the occurrence of any of the following circumstances:

- (a) The Court denies or rescinds preliminary approval of this Agreement, or declines to enter, or materially modifies, the contents of the Preliminary Approval Order;
- (b) Any of the signatories hereto have not signed this Agreement at least fifteen (15) days prior to Final Approval;
- (c) The Court declines to provide Final Approval of this Agreement, or declines to enter the Judgment that fully adopts the terms of this Agreement, or enters a Judgment that materially modifies, or that is at material variance from, the terms of this Agreement;
- (d) The Court's Judgment is vacated, reversed, or modified in any material respect in any appeal or other review, or in any collateral proceeding occurring prior to the Effective Date;
- (e) The Effective Date does not occur for some other reason; or

(f) Any federal or state authorities object to, or request material modifications of, the Settlement and the Court adopts such objections and/or modifications.

12.2 Consequences of Termination. In the event this Agreement does not receive Final Approval by the Court, or in the event the Court's Final Approval is overturned, reversed, vacated, or modified in any material way on appeal or review, or by or through any collateral proceeding, or in the event the Settlement is terminated or fails to become effective in accordance with the terms of this Agreement, the Parties shall request the Court to restore them to their respective positions in the Action as of September 9, 2020. In such event: a) the terms and provisions of this Agreement shall have no further force or effect with respect to the Parties; b) neither this Agreement nor any discussions or documents regarding it, or the Settlement prior to the termination/cancellation of this Agreement, shall be used in the Action or in any other proceeding for any purpose except with regard to matters set forth in this Section; c) any order or judgment entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*; d) no prejudice shall attach to any motion by Defendants, either filed or unfiled, to compel the Named Plaintiffs into individualized arbitration and to dismiss and/or stay the Action.

12.3 Costs of Termination. If any Party terminates this Agreement, both Plaintiffs and Defendants shall bear their own costs incurred.

12.4 Effects of Termination. In the event this Agreement is terminated:

(a) The Defendants shall have no obligations to make any payments to any Party, Class Representative, Class Member, attorney, fund, or account (including but not limited to that set up for the Settlement Pool), or to the Settlement Administrator;

(b) Any Preliminary Approval Order, Final Approval Order and the Judgment, including any order of class certification pursuant to the Agreement (provisional or

otherwise), shall be vacated and the Amended Class/Collective Action Complaint shall be deemed withdrawn; and

(c) Any monies paid or remitted by Defendants to the Settlement Administrator pursuant to Section 6.3.1, except mailing costs to the extent actually spent on mailing of the Class Notice and costs for administration and preparation of the Opt Out List, shall be immediately returned to Defendants.

XIII. LIMITATIONS UPON THE TERMS OF SETTLEMENT

13.1 No Admission of Wrongdoing. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance thereof, is, or may be deemed to be, or may be used as: (a) an admission or evidence of the truth of any allegations in the Action, either as presently pending or as to be amended as provided for herein; b) an admission or evidence of the validity of any of the Released Claims, or any alleged wrongdoing or liability of any of the Released Defendants; (c) an admission or evidence of any fault or omission of any of the Released Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal (including any arbitral forum), other than such proceedings as may be necessary to consummate or enforce this Agreement, the Settlement memorialized herein, or the Judgment; (d) an admission that Ferny Properties, Inc. or any of the Released Parties is, or could be held to be, a “joint employer” of the Plaintiffs or of any one or group of them; (e) an admission that the Club’s corporate identity is or can be disregarded; or (f) an admission as to, or evidence of, the certifiability of any Claims contemplated herein or in the Action, either as presently pending or as to be amended as provided for herein. Notwithstanding the preceding, however, this Agreement and/or the Judgment may be filed and used in any action or proceeding in any court, administrative agency, or other tribunal to support a defense of *res judicata*, collateral estoppel, payment, release,

good faith settlement, accord and satisfaction, claim preclusion, issue preclusion, or any similar defense or counterclaim.

XIV. PROTECTIVE ORDER

14.1 Terms of Protective Order. The Parties shall agree upon, and shall submit to the Court for entry, a stipulated protective order in the Action in order to protect the confidentiality of certain identities, information, documents, and materials deemed to be confidential pursuant to the terms of this Agreement or as otherwise designated by the Parties (collectively, “CONFIDENTIAL INFORMATION”). Such CONFIDENTIAL INFORMATION shall be held in confidence by the Parties and/or by their attorneys pursuant to the terms of that order and shall not be submitted in any public filing or other public disclosures except as may be permitted herein or upon order of the Court.

14.2 Return of Confidential Information. All documents and/or things produced or generated through discovery by any Party in the Action (including by way of informal discovery provided for by the Parties) shall be destroyed within ninety (90) days of the Effective Date. Each Party shall promptly certify to the other that all documents and/or things produced or generated through discovery have been destroyed. No Party shall be required, however, to destroy their own documents and things or any other document that the Protective Order entitles the Party or its Counsel to retain following the termination of litigation.

XV. NOTIFICATIONS

15.1 Process of Notification. Unless otherwise specifically provided herein, all notices, demand, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiffs and the Settlement Class:

Edward Ciolko
Carlson Lynch LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222

To Defendants:

Mark R. Hanson
201 N. 5th Street – 18th Floor
P.O. Box 2626 Fargo, North Dakota 58102

XVI. MISCELLANEOUS PROVISIONS

16.1 This Agreement may be amended or modified only by a written instrument signed by or on behalf of all of the signatories hereto or their successors-in-interest. No oral amendment or modification shall be permitted or effective.

16.2 This Agreement and the Settlement were entered into after substantial good faith, arms-length, negotiations between the Parties, Class Counsel and Defense Counsel. As such, no Party shall be deemed to have relied upon the representations of any other Party or opposing counsel in relation to the negotiation or execution of this Agreement.

16.3 Each counsel or other person executing this Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

16.4 This 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 Agreement. This Agreement may be executed by signature delivered by facsimile or PDF and need not be the original “ink” signature. A complete set of executed counterparts shall be filed with the Court prior to the Fairness Hearing. This Agreement shall become binding upon its execution by the Class Representative, the Defendants, all counsels of record, and upon Final Approval by the Court.

16.5 This Agreement and the exhibits hereto constitute the entire fully integrated agreement among the Parties. No representations, warranties, or inducements have been made to any Party concerning the Settlement, this Agreement, or its exhibits, other than the representations, warranties, and covenants contained in such documents.

16.6 The failure of any of the Parties to perform any of their obligations hereunder shall not subject such Party to any liability or remedy for damages, or otherwise, where such failure is occasioned, in whole or in part, by acts of God, fires, accidents, earthquakes, other natural disasters, explosions, floods, wars, interruptions or delays in transportation, power outages, labor disputes or shortages, shortages of material or supplies, governmental laws, restrictions, rules or regulations, sabotage, terrorist acts, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party.

16.7 This Agreement shall be governed by the laws of the State of North Dakota. All actions or proceedings relating to this Agreement may only be brought in the United States District Court for the District of North Dakota.

16.8 Upon the occurrence of the Effective Date, the Settlement shall be fully enforceable by the Court, and the Court shall retain exclusive and continuous jurisdiction over the Parties and the Settlement Class Members to interpret and enforce the terms and conditions of, and rights under, the Settlement until the terms of this Agreement are fully performed.

16.9 Unless otherwise indicated herein, where any Party's exercise of any right under this Agreement requires written notice, the Party shall serve such written notice on the counsel of record for the other Parties by First Class U.S. Mail or any method that is at least as reliable and timely as First Class U.S. Mail.

16.10 Each of the Parties acknowledges and represents that he/she/it has fully and carefully read this Agreement prior to execution; that he/she/it has been fully apprised by his/her/its counsel of the legal effect and meaning of this Agreement and all terms and conditions hereof; that he/she/it has had the opportunity to make whatever investigation or inquiry he/she/it deemed necessary or appropriate in connection with the subject matter of the Action; that he/she/it has been afforded the opportunity to negotiate any and all terms of this Agreement; and that he/she/it is executing this Agreement voluntarily and free from any undue influence, coercion, duress, or menace of any kind. This Agreement reflects the conclusion of each of the Parties that this Agreement, the Settlement, the Judgment to be entered hereunder, and the releases, waivers, and covenants provided for herein, are in the best interest of said Parties, the general public, and the Settlement Class. Except as expressly provided herein, this Agreement is not intended to confer upon any other person or entity any rights or remedies.

16.11 In the event that any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way affect any other provisions if Defense Counsel and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. However, if any funds have been remitted, or other consideration conveyed, to a Class Representative or a Settlement Class Member, then the releases and discharges granted, waivers conferred, and satisfactions conveyed by this Agreement may not be terminated.

16.12 The headings and captions inserted in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

16.13 Except as otherwise provided in this Agreement, the Parties shall bear their own respective costs and fees.

16.14 None of the Parties, or their respective counsel, shall be deemed to be the drafter of this Agreement or its exhibits for purposes of construing their provisions. The language in all parts of this Agreement and its exhibits shall be interpreted according to its fair meaning, and shall not be interpreted for or against any of the Parties as the drafter of the language.

16.15 All time computations under this Agreement shall be done in accordance with the provisions of the rules of court applicable to the United States District Court for the District of North Dakota, which govern the calculation of time.

16.16 The waiver by any of the Parties to this Agreement of any provision thereof shall not be deemed a waiver by that Party of any other provision of this Agreement.

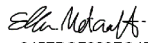
16.17 Each and every one of the Parties hereto acknowledges and agrees that he/she/it will and shall, at all times subsequent to the execution of this Agreement and upon reasonable request, make, do, and execute, or cause to be made, done, or executed, all such further documents and instruments to effectuate the full intent, purpose, covenants and conditions as set forth herein as any Party may require.

16.18 This Agreement shall be binding upon and inure to the benefit of the Parties, the Settlement Class Members, the Participating Class Members, Class Counsel, and Defense Counsel, as well as their assigns, successors-in-interest of any kind whatsoever, purchasers of any of their assets and/or liabilities, heirs, executors, and administrators.

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IT IS SO AGREED BY PLAINTIFF:

Dated: 2/26/2021

DocuSigned by:

045FDCf329EC4B2...
Ella Metcalf

APPROVED AS TO FORM AND CONTENT

Dated: 2/26/2021



Edward W. Ciolko
Carlson Lynch, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
267-609-1990

Class Counsel for Plaintiffs

IT IS SO AGREED BY DEFENDANTS:

Ferny Properties, LLC

Dated: 3/1/21



By: *Kerry Fernholz*
Its: *president*

APPROVED AS TO FORM AND CONTENT

Dated: 3/1/2021



Matthew J. Hoffer
Shafer & Associates, P.C.
3800 Capital City Blvd. Ste. 2
Lansing, MI 48906
517-886-6560

Counsel for Defendant