

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JESSICA BERGER, ET AL,

Plaintiffs,

v.

PERRY'S STEAKHOUSE OF ILLINOIS,
LLC., D/B/A PERRY'S STEAKHOUSE
AND GRILLE, ET AL,

Defendants.

Case No: 1:14-cv-08543

Judge: Thomas M. Durkin

AMENDED EXHIBIT A TO JOINT
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT

**AMENDED JOINT STIPULATION OF
SETTLEMENT AGREEMENT AND RELEASE**

Subject to the Court's approval, this Settlement Agreement and Release ("Agreement") is entered into by and between Plaintiffs Jessica Berger and Timothy Rendak ("Named Plaintiffs"), on behalf of themselves and the other eligible opt-in and class members listed on Attachment "A" to this Agreement, and Perry's Steakhouse of Illinois, L.L.C. d/b/a Perry's Steakhouse and Grille, Howard Cortes and Jeffrey Pagnotta (collectively referred to herein as "Defendants" or "PSI") and is made as of the 5th day of February 2021.

I. RECITALS AND BACKGROUND

On October 30, 2014, Named Plaintiffs, former servers at Perry's Steakhouse and Grille, initiated the above-captioned action (the "Lawsuit") on behalf of themselves and other persons similarly situated, alleging PSI violated the federal Fair Labor Standards Act ("FLSA"), the Illinois Minimum Wage Law ("IMWL"), and the Illinois Wage Payment Collection Act ("IWPCA"), and also

asserting common law claims for Breach of Contract and Unjust Enrichment under Illinois law (“the Claims”). On March 12, 2018, the Court granted Plaintiff’s Motion for Partial Class/Collective Certification under FRCP 23 and Section 216(b) of the FLSA on Plaintiffs’ Credit Card Offset Fee (“CCOF”), Notice, Side Work and Unjust Enrichment claims. Notice of the Lawsuit was sent to all 107 then identified class members and 29 members timely opted into the FLSA claims. Four (4) class members opted out of participating in this Lawsuit. During discovery, 4 additional plaintiffs were involuntarily dismissed. All remaining Opt-In plaintiffs are identified in Attachment “B.”

At the close of discovery, the Parties each filed motions for summary judgment. Plaintiffs filed for judgment on only their CCOF and Side Work claims. Defendants’ sought summary judgment on all claims. On December 23, 2019, the Court granted plaintiffs’ motion for summary judgment on their CCOF claims under both the FLSA and IMWL, including a finding that the Opt-In plaintiffs were entitled to liquidated damages under the FLSA, but excepting Plaintiffs’ claim that PSI’s violation was willful. Plaintiffs’ motion was denied as to their Side Work claims. Defendants’ motion for judgment was denied as to the CCOF, Side Work and Notice claims. The Court granted Defendants’ motion for judgment on the Plaintiffs’ claim that Defendants administered its Tip Pool in violation of the FLSA and granted in part and denied in part their motion on Plaintiffs’ Breach of Contract and Unjust Enrichment claims. In summary, the Court left it to a jury to decide Plaintiffs’ (1) FLSA Notice claim, (2) FLSA and IMWL Side Work claims, (3) certain aspects of the common law claims, (4) the CCOF claim as to Defendant Cortes, and (6) whether PSI’s actions as to the FLSA CCOF claim were willful.

Subsequently, the matter was set for trial. The claims against PSI for payment of wages, liquidated damages, return of tips, attorney's fees, costs, and any other sums made by the Named Plaintiffs, on their own behalf and as representatives of the Class Plaintiffs, remain highly disputed. PSI continues to deny the allegations of the Complaint and denies liability.

It is the desire of the Parties to fully compromise, settle and forever resolve and finally dispose of all outstanding controversies and claims relating to the Parties, the Opt-In Plaintiffs and to the Settlement Classes/Subclasses identified herein (“Settlement Recipients”) without further dispute, litigation, or other legal proceedings. It is the intention of the Parties that this Agreement constitute a full and complete settlement and release of all such claims pursuant to the terms described herein.

The Law Offices of Colleen M. McLaughlin (“Class Counsel”) represents that they have conducted an independent investigation and evaluation of the facts of the Lawsuit. The Parties have engaged in extensive discovery, which included the production of thousands of payroll and time records, numerous depositions, and the retention of experts. Class Counsel are of the opinion that the settlement with PSI is fair, reasonable, and adequate and is in the best interests of the Settlement Recipients identified herein, in light of all known facts and circumstances.

PSI represents that prior to the execution of this Settlement Agreement by the Parties, in order for Class Counsel to prepare a list and corresponding calculations accounting for claims of all of the Settlement Recipients identified herein, it has provided Class Counsel with all available contact information for each such individual. PSI has also provided in discovery comprehensive time and payroll records indicating the number of shifts each Settlement Recipient actually worked and the amount of time (hours) worked on each shift from November 2013 to the date on which class certification was granted, March 12, 2018.

PSI and Named Plaintiffs (collectively the “Settling Parties”) agree to do all things and procedures reasonably necessary and appropriate to obtain preliminary and final approval of this Agreement conditioned upon: (a) payment by PSI of the consideration expressed in this Agreement subject to the terms, conditions and limitations of this Agreement; (b) the payment of Attorneys’ Fees as set forth in this Agreement; (c) the release and dismissal with prejudice of all claims against PSI as set forth in this Agreement; and (d) other valuable monetary and non-monetary consideration as set forth

in this Agreement. This Agreement is contingent upon approval by the Court and the Settling Parties signing this Agreement and is entered into voluntarily by the Settling Parties for settlement purposes only.

NOW, THEREFORE, in consideration of the foregoing, and the promises, covenants, representations, warranties, and other consideration contained hereinafter, the sufficiency and adequacy of which are stipulated and conceded, the parties agree as follows:

II. THE SETTLEMENT PAYMENT AND CALCULATION OF CLAIMS

1. In consideration of the mutual covenants and promises set forth herein, and conditioned upon approval by the Court of the terms of this Agreement, PSI will pay to the Settlement Recipients and Class Counsel the amount of FOUR HUNDRED FORTY-FIVE THOUSAND DOLLARS (\$445,000.00) (“Settlement Proceeds”) and an additional amount payable to Class Counsel for attorneys’ fees and taxable costs of court to be negotiated by the Parties or determined by the Court as set forth below in Paragraph 2(f). These Proceeds will be administered by Class Counsel in accordance with the terms and conditions of this Agreement.

2. The Parties agree that the Settlement Proceeds shall be allocated as follows:

(a) Class Representative Payment. The sum of \$10,000.00 shall be allocated to the two Named Plaintiffs, payable in equal amounts of \$5,000 each as payment for services as Named Plaintiffs in connection with the prosecution and settlement of the claims; and

(b) Costs of Court and Expenses. The sum of \$34,686.17 shall be allocated as complete reimbursement to the Named Plaintiffs and their counsel for taxable costs of court and expenses. This sum does not include attorneys’ fees which are to be determined separately as set forth below in sub-section (f); and

(c) Notice Claim. Sub-Class One (FLSA only). This sub-class is defined as all persons employed by Defendants in the occupation of “Server,” from September 1, 2013, to December 31,

2016, who were paid by Defendants at the sub-minimum wage, tip credit rate, and timely opted into the collective action. Each of these Opt-In Settlement Recipients shall be eligible to receive a *pro rata* share of \$23,727.31. This total sum represents 44.29% of the total number of hours each sub-class member worked as a server during the eligible time period of October 14, 2014,¹ through December 31, 2016,² multiplied by \$3.30.³ The amount each Opt-In Settlement Recipient is to receive for the Notice claim is set forth in Attachment “C”; and

(d) Credit Card Offset Fee Claims. Sub-Class Two (IMWL (Sub-Class 2) and FLSA (Sub-Class 2(a)). These sub-classes are defined as all persons employed by Defendants as “Servers” who were paid at the sub-minimum wage, tip credit rate, and were subjected to Defendants’ “Tip Refund” policy that terminated effective October 12, 2014 (the “IMWL Settlement Recipients”), and, with respect to the FLSA claim, timely opted into the collective action (the “FLSA Settlement Recipients”). The sum of \$121,425.58 shall be allocated to all IMWL Settlement Recipients who are eligible to recover wages on the Credit Card Offset Fee Claims. This sum represents \$3.30 for all hours worked by each IMWL Settlement Recipient (the recipient’s “base wage” calculation). All IMWL Settlement Recipients will also receive interest in the amount of 2% per month for each month their additional “base wage” was owed to them from one month after the start of their employment through April 30, 2020. The total amount of IMWL interest to be allocated is \$175,411.98 and the amounts each IMWL Settlement Recipient will receive for base wages and IMWL interest are identified in Attachment “D”. In

¹ As set forth in sub-section (d) below, any Sub-Class One Participant who is also a Sub-Class Two Participant is being compensated in full for wages earned during the period November 12, 2013, through October 12, 2014.

² The Parties having previously stipulated that PSI’s issuance and use of a revised notice as of December 31, 2016 brought its notice process into compliance with the requirements of the FLSA.

³\$3.30 is the difference between Illinois minimum wage (\$8.25) and Illinois tip credit rate (\$4.95).

addition, all Sub-Class 2(a) FLSA Settlement Recipients will receive a *pro rata* share of \$22,646.93 as liquidated damages. This total sum represents 50% of the total number of hours each FLSA Settlement Recipient worked as a server during the eligible time period of November 12, 2013 to October 14, 2014, multiplied by \$3.30. The amounts each Sub-Class Two FLSA Settlement Recipient will receive as liquidated damages are identified in Attachment “E”; and

(e) Side Work Claims-Sub-Class Three -FLSA and IMWL (combined). This Sub-Class is defined as all persons employed by Defendants as “Servers” from October 14, 2014, through March 15, 2018, who were paid at the sub-minimum wage, tip credit rate, and performed what PSI assigned as “side work” duties, provided, however, that Sub-Class Three Side Work Settlement Recipients will only recover for time worked during which they are not also receiving a recovery as a member of another Sub-Class. For settlement purposes, there will be no additional recovery of IMWL interest or liquidated damages for FLSA opt-ins on the Side Work claim. The recovery for each member of the Side Work Sub-Class will be based upon a formula of 19.225% of all hours worked multiplied by \$3.30. The total recovery for all Sub-Class Three Settlement Recipients is \$57,102.04, as set forth in Attachments “F” and “G,” which also shows the *pro rata share* of recovery for each Sub-Class Three Settlement Recipient; and

(f) Attorneys’ Fees. Defendants acknowledge that Class Plaintiffs are the prevailing party as to certain claims in this Lawsuit. The Parties have accordingly agreed to follow the procedures set forth in FRCP 54 and NDIL Local Rule 54.3 to determine Class Counsel’s fee. If the Parties do not reach an agreement on the amount to be paid to Class Counsel for attorneys’ fees by the time the Court is prepared to enter its Final Approval of Settlement Agreement, the Court will enter an order as to all other matters and reserve the issue of attorneys’ fees for the Court to decide. The Parties expressly agree that if they do not reach an agreement on their own, that the Court will decide the matter and each Party hereby waives their right to appeal that decision by the Court. Dismissal

of the Lawsuit will not be entered until such time as the Court enters its order on the payment of fees.

III. SETTLEMENT APPROVAL PROCEDURE

Before payment of the Settlement Proceeds, this Settlement Agreement requires the occurrence of all of the following events in Paragraphs 3-12:

3. Execution of this Settlement Agreement by the Settling Parties and submission of the Settlement Agreement to the Court for preliminary approval.

4. Entry of an Order by the Court granting preliminary approval of the Settlement Agreement, including approval of the form and content of the Class Notice, attached as Attachment “H.”

5. The Class Notice to the Settlement Recipients being mailed by email and/or first class mail to the most recent address known or reasonably determinable for each Settlement Recipient within seven (7) days after the Court’s preliminary approval of this Settlement Agreement.

6. A period of 30 days after the mailing of the Class Notice for Settlement Class members to submit a postmarked notice of Opt-Out.

7. Filing by Class Counsel, prior to the date of the Final Approval Hearing, of Class Counsel’s declaration, in writing, that the Class Notice to the Settlement Recipients has been disseminated in accordance with the Court’s order and providing a summary of the delivery of said notice to Settlement Class Members and any Notices of Opt-Outs received.

8. That neither PSI nor Class Counsel have chosen to exercise their rights pursuant to Paragraph 43 to withdraw from or terminate the Settlement Agreement.

9. The Settlement Representatives and the Opt-In Settlement Recipients execute and return through Class Counsel to Defendants' Counsel the "Release" attached hereto as Attachment "I."⁴

10. Final Approval Hearing and the entry of the Final Approval Order.

IV. NOTICE TO THE SETTLEMENT CLASS

11. A Class Notice in the form of Attachment "H" attached hereto, as approved by the Court, shall be sent by Class Counsel to Settlement Recipients within seven (7) calendar days of the entering of an Order granting preliminary approval of this Settlement Agreement and Notice.

12. The text on the outside of the Notice envelope shall state: "Important Information About Your Legal Rights To Participate In A Settlement."

13. The Notice shall notify the Settlement Recipients of their right to Opt-Out of the Settlement Class, which they may do by mailing to Class Counsel the completed and signed opt out form attached as Exhibit A to the Notice containing the following statement:

I, _____ am requesting to be excluded from the class monetary settlement in this case. I understand that by doing so, I will receive no money from the settlement fund created under the Settlement Agreement. I further understand that if for any reason I decide to pursue my own claim for wages or any other relief covered by this Agreement against Perry's Steakhouse of Illinois, LLC, or any other party covered by this Agreement, then any such claim may be classified as "time-barred" because it will be subject to the applicable statutory limitations period and shall not be eligible for any exception to such limitations.

Any such Opt-Out written statement must be postmarked not more than thirty (30) calendar days after the first mailing of the Notice to the Settlement Recipient (the "Opt-Out period"). Persons who are eligible to submit, and do submit, valid and timely requests to Opt-Out of the Settlement Class will not participate as a Settlement Recipient and will not be bound by the terms of the Settlement

⁴ Any Opt- In Plaintiff who does not return a signed Release will still be entitled to receive compensation under the IMWL claims but will no longer be eligible to receive FLSA damages.

Agreement, if it is approved, or the Final Judgment in this Lawsuit.

14. If any Settlement Recipient opts out of the Settlement Class or with respect to FLSA Settlement Recipients fails to provide a signed Release as required by this Agreement⁵, the forfeited portion of their designated Settlement Award will be divided *pro rata* and added to the non-wage portion of the Settlement Awards payable to the ten (10) class members (other than the Named Plaintiffs) who provided deposition testimony in this Lawsuit.⁶

15. If there is any conflict between the Notice and this Agreement, the terms of this Agreement shall control.

16. At least three (3) days prior to the Final Approval Hearing, Class Counsel shall provide the Court a declaration of due diligence and proof of mailing with regard to the mailing of the Class Notice.

17. If a Settlement Recipient wishes to object to the Settlement Agreement, the Settlement Class Member must submit his/her written and signed objection to Class Counsel at the address provided on the Class Notice at least seven (7) calendar days prior to the date set for the Final Approval Hearing. Class Counsel will provide any objections to the Court along with their declaration of due diligence as set forth in paragraph 16, above.

V. PROCEDURE FOR LOCATING MISSING PLAINTIFFS

As indicated above, prior to the execution of the Settlement Agreement, PSI has provided to Class Counsel contact information available to it for all Settlement Recipients. Throughout the

⁵ See limitation in footnote 4.

⁶ The list of such individuals is attached to this Agreement as Attachment "J."

course of this Lawsuit, Class Counsel has made numerous attempts to update addresses of all Settlement Recipients but there are some addresses that Class Counsel has not obtained from PSI or has been unable to verify.

18. Class Counsel shall inform PSI's counsel where no contact information for a Settlement Recipient has been provided to Class Counsel. PSI's Counsel shall locate and deliver to Class Counsel as promptly as practicable all available contact information for any such Recipient.

19. If any Notice to a Settlement Recipient is returned as undeliverable, or it otherwise becomes known to Class Counsel that a Settlement Recipient's contact information is not current, Class Counsel, in coordination with PSI's Counsel, shall promptly attempt to locate another address for such Settlement Recipient. In this regard, PSI agrees to the use of, and agrees to pay, a third-party skip tracer to assist in this process, in an amount not to exceed a total of \$2,500.00. Any unfound Settlement Recipient shall be traced a maximum of two times. If another address is located by this process, Class Counsel shall promptly mail another Notice to this Settlement Recipient at the updated address.

20. Class Counsel shall maintain a log listing all Recipients to whom the Notice has been sent, and the status of each such Notice, including the date of issuance of any mailing (or e--mailing or re-mailing, if applicable). This log shall also recite contact information, including whether Class Counsel is provided information by any Settlement Recipient of the need to update such information, and shall further record and identify responses from all listed Recipients indicating, among other items, whether such Recipients are "opting out." Class Counsel shall promptly inform PSI of any other matters pertaining to the administration of the Settlement Proceeds pursuant to the Court's Order and the terms of this Agreement.

21. Any Recipient who is not located by the time the *Cy Pres* award is to be determined as set forth in Paragraph 29, or who opts out of this Lawsuit under the procedure approved by the

Court, will be disqualified from receiving his or her designated *pro rata* share of the Settlement Proceeds.

VI. NON-DISCLOSED SETTLEMENT CLASS MEMBERS

22. If an individual identifies himself or herself within the Opt-Out Period as qualified to participate as a Settlement Recipient but not included in the list of such Recipients attached as Attachment "A," Class Counsel shall be required to request of this individual appropriate substantiation of his or her eligibility to participate as a Settlement Recipient. If this individual timely provides such evidence to the satisfaction of Class Counsel, then Class Counsel shall notify PSI's Counsel of such identification. PSI's Counsel shall then be entitled to confer with PSI to determine whether PSI does or does not dispute such qualification as defined by the terms of this Agreement. If PSI disputes such eligibility, or if Class Counsel is unable to determine such eligibility to her satisfaction, then this individual's claim will not be included in any distribution of the Settlement Proceeds. If there remains a dispute as to eligibility, then the dispute shall be referred to the Court, who shall have final authority to determine the individual's eligibility to receive a Settlement Award as a proper Settlement Recipient. If the Court determines, or Counsel for the Parties agree, that such individual is a proper Settlement Recipient, Class Counsel shall calculate the individual's distributive share in the manner set forth above. If the Court determines that the individual in question was not disclosed as a server to Class Counsel prior to the Court's granting of Preliminary Approval, then PSI will pay directly to that Class Recipient the amount calculated by Class Counsel and shall also pay this Recipient's *pro rata* portion of any tax withholding and issue any required tax forms.

23. During the Opt-Out Period, upon presentation of letters of administration, guardianship or powers of attorney with respect to an estate of a deceased, disabled or incompetent Final Settlement Recipient or other sufficient evidence of personal representation, Class Counsel shall treat such estate administrator, guardian, or properly designated representative as the Final Settlement

Recipient, and shall additionally update its log of eligible Recipients to include the appropriate identification of, and contact information for, such representative, according to the procedure recited in Paragraph 20 above.

VII. FINAL APPROVAL ORDER

24. The Parties will submit a proposed Final Approval Order and Final Judgment to the Court at least 5 calendar days prior to the Final Approval Hearing:

- a. Approving the Settlement Agreement and adjudging the terms of the Settlement Agreement to be fair, reasonable and adequate;
- b. Directing consummation of the terms and provisions of the Settlement Agreement;
- c. In the event the Parties are in agreement as to the payment to Class Counsel of attorneys' fees, the Order shall provide for the dismissal of the Lawsuit on the merits and with prejudice so as to bar permanently all Settlement Class Recipients from prosecuting against PSI for any matters, claims, debts, liabilities, obligations, penalties, or cause of action released or disposed of by this Settlement Agreement and that the promises, agreements, obligations, undertakings, representations, certifications, and warranties set out herein shall survive the closing of this Settlement Agreement, the releases contained herein, and the dismissal to be entered in the Lawsuit.
- d. If the Parties cannot reach agreement on attorneys' fees, and therefore refer this matter to the Court for decision as set forth in Paragraph 2 (f), the Final Approval Order will set forth the briefing schedule on Class Counsel's Petition for Fees and make no reference to the final dismissal of the Lawsuit, which will be entered only after the Court rules on Class Counsel's Fee Petition.

VIII. PROCEDURES FOLLOWING SETTLEMENT APPROVAL

After the events set forth above in Paragraphs 3-12 occur, the following events must occur:

25. Within 15 days of entry of the Final Approval Order, Defendants shall prepare and forward to Class Counsel separate checks for payment (the "Settlement Awards") as follows:

- a) Checks in the amount specified for each individual Settlement Recipient, less applicable withholdings, in the amounts designated as "Base Wages" under the CCOF claim and Notice and Side Work damages as set forth in Attachment "A" ("Back Wage Damages").

- b) Checks in the amounts specified for each eligible Settlement Recipient, in the gross amounts designated as Interest and/or Liquidated Damages in Attachment “A” (“Other 1099 Damages”).
- c) Checks for the gross amount of \$5,000 each made payable to Jessica Berger and Timothy Rendak for serving as Class Representatives. (the “Class Representative Payment”).
- d) A check in the amount of \$34,686.17 as set forth in Paragraph 2 (b) of this Agreement. And, if agreed between the Parties as to amount, a check payable to Class Counsel for attorneys’ fees.

26. All checks to be distributed to any Settlement Recipient shall contain the following language above the place for endorsement:

I understand that I am receiving this check because of my participation in a lawsuit, and that by cashing it, I am barred from making any claim of any kind against PSI for any matter, claim, debt, liability, obligation, penalty, or cause of action released by the Settlement Agreement requiring this payment. I further understand that the Lawsuit related to this payment is being dismissed by the Court with prejudice.

Class Counsel shall distribute all checks to the Settlement Recipients, the Class Representatives, and Class Counsel.

27. Forty (40) days after distribution of the Settlement Proceeds, PSI’s Counsel shall issue a report to Class Counsel listing all un-cashed checks.

28. Seventy-five (75) days after distribution of the Settlement Proceeds, PSI’s Counsel shall issue an updated report to Class Counsel listing all un-cashed checks, and PSI shall simultaneously cancel any outstanding, un-cashed checks.

29. Eighty- Nine (89) days after distribution of the Settlement Proceeds, PSI shall issue and forward to Class Counsel a single check payable to the *Employees Rights Advocacy Institute for Law and Policy*, the *Cy Pres* recipient, in the total amount of the un-cashed Settlement Recipients’ checks.

30. The Court enters an order on Class Counsel's Petition for Fees, if necessary, and enters a final dismissal order.

IX. ALLOCATIONS AND TAX TREATMENT

31. PSI shall be responsible for withholding and payment of all payroll taxes. The sums designated as Back-Wage payments to Settlement Recipients will be payable as W-2 earnings and shall be subject to applicable tax withholdings based on and using each respective Settlement Class member's current or last used W-2 allocations. Each Back-Wage payment will be accompanied by a payment summary or pay stub prepared by PSI setting forth the gross amount of the Back Wage payment and an itemization of all withholdings. Payments for all Other Damages and payment to the Class Representatives and Class Counsel will be paid in the gross amount of the allocation as income to be reported on IRS Form 1099.

32. PSI will issue directly to the Settlement Recipients applicable W-2 and 1099 tax forms for payment of Settlement Proceeds to the Settlement Recipients. It will separately issue directly to Class Counsel the applicable tax form for the payment of Class Counsel's fees and costs. PSI shall issue all such forms in the normal course of business in the month of January following the year the payments are made, or at such other date as is authorized by IRS regulations.

33. The Parties agree that PSI is not and shall not in any manner be liable for any taxes, penalties, interests, or other costs that Class Counsel, Class Representatives or any Settlement Recipient may be required to pay as a result of or related to the receipt of any Settlement Proceeds. Reporting with respect to receipt of Settlement Proceeds will be the responsibility of each Recipient.

34. PSI shall not deduct from Settlement Proceeds checks any amounts required to be paid as the employer's share of payroll taxes nor make any other deductions unless legally required to do so. PSI shall be responsible for paying the employer's portion of payroll taxes due on all Back-Wage

payments to the Final group of Settlement Recipients and shall be responsible for reporting and paying all amounts properly withheld from the Back-Wage Settlement Proceeds to the appropriate tax and government entities, based on and using each respective Settlement Recipient's current or last used W-2 allocations.

X. DISTRIBUTION OF SETTLEMENT AWARDS

35. Within fifteen (15) days of the later of both (i) the Court's order approving this Agreement and (ii) the execution and delivery to counsel of the Releases referenced in Paragraph 38 of the Agreement and a Form W-9 from Class Counsel, Class Counsel shall be authorized to issue to each Settlement Recipient the amount(s) set forth in Attachment "A," relating to that Recipient.

36. Class Plaintiffs will have sixty (60) days after the date the settlement checks are issued (the "Check Issuance Date") by which to negotiate the checks. If any Settlement Recipient (including Settlement Representatives) does not negotiate his or her settlement check within that time, the check shall be deemed "void."

37. The Parties agree that even if a Class Recipient does not timely negotiate a Settlement Check, nevertheless he or she shall still be considered to have released the Released Claims (as defined herein).

XI. RELEASE BY THE SETTLEMENT CLASS

38. Upon final approval by the Court of the Settlement Agreement, and except as to such rights or claims as may be created by the Settlement Agreement, all Settlement Recipients will be deemed by the Court to have fully released and discharged PSI and all past, present and future direct and indirect parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of its past, present, and future officers, directors, members, trustees, agents, employees, attorneys, contractors,

representatives, divisions, units, branches, and any other persons or entities acting on their behalf or in their interest, from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, that were alleged or that reasonably could have arisen out of the same facts alleged in the Lawsuit including but not limited to any claims of violations of federal or state minimum wage laws, as well as any claims under federal or state law for unpaid wages, unpaid overtime, liquidated damages, punitive damages, unlawful deductions from wages, miscalculation of wage rates, record-keeping violations, unjust enrichment, breach of implied or express contracts, and promissory estoppel. This Release specifically excludes claims covered by Workers' Compensation law, and claims alleging discrimination, personal injury, harassment, fraud, negligence, theft, or conversion, except insofar as such claim is based on the failure to pay wages or to comply with minimum wage requirements.

39. In addition, upon the final approval by the Court of this Settlement Agreement, each Named Plaintiff and each Opt-In Settlement Recipient will execute the "Release" attached hereto as Attachment "I."

XII. TERMINATING THE SETTLEMENT AGREEMENT

40. If the Court does not approve any material condition of this Settlement Agreement the entire Settlement Agreement will be voidable and unenforceable. A material condition of this Settlement Agreement shall include, but not be limited to,

- a. PSI's being required to pay, except as required herein, more or less (in any form or manner) than the Settlement Proceeds;
- b. PSI's not being required to pay the employer's share of payroll taxes for any Settlement Awards due Settlement Recipients not properly identified as set forth above;
- c. The Court's not approving the allocations and terms set forth herein for the Settlement Awards;

- d. The Court's not approving Class Counsel's fees as proposed herein;
- e. Named Plaintiffs' and other Recipients covered by Paragraphs 45 and 46 of this Settlement Agreement not supporting the non-disclosure and non-disparagement provisions set forth therein, provided, however, the Court's *sua sponte* rejection of any other provision contained in paragraphs 45 and 46 shall not constitute a material condition.

41. If the Agreement is not approved by the Court for any reason in the form submitted by the Parties, the Parties will attempt to address any concerns raised by the Court and resubmit a revised Agreement if possible. If the Parties cannot agree on a revised Agreement or if the Court denies the approval of a renegotiated settlement, this Agreement or the re-negotiated agreement shall be null and void as of the date of the Court's order denying approval of the Agreement or renegotiated agreement. In such event, the Parties shall immediately request the Lawsuit be placed on the Court's trial calendar.

42. The Parties agree not to encourage any Settlement Class Member or group of Settlement Class Members to Opt-Out of the settlement.

43. Any of the parties may terminate this Settlement Agreement as provided in Paragraph 41 above by giving notice, in writing, to opposing Counsel and to the Court at any time before final approval of the Settlement Agreement by the Court. The Lawsuit shall be returned to the Court's trial call. If such termination occurs, the Settlement Agreement and all negotiations, statements and proceedings relating thereto shall be deemed not to prejudice the rights of any of the Parties, all of whom shall be restored to their respective positions in the Lawsuit prior to the settlement.

44. Pursuant to Rule 408 of the Federal Rules of Evidence, neither this Settlement Agreement, nor any ancillary documents, actions, statements or filings in furtherance of settlement shall be admissible or offered into evidence in the Lawsuit or any other action for any purpose whatsoever.

XIII. NON-DISCLOSURE /NON-DISPARAGEMENT

- 45. The Named Plaintiffs and any Recipient who has signed a Release as part of this

Agreement agree that they will not make any disparaging or critical statements or remarks of any kind or character, either verbally or in writing (including by electronic means), about their employment with PSI, its products or services, its current or former employees, its current or former members of management, or the separation of Employee's employment, to any prospective employee, any customer or business contact of the Company personally known to Named Plaintiff, or any representative of the media.

46. Neither Named Plaintiffs nor Class Counsel shall issue any press release, initiate any media contacts, or publicize in any manner any information on social media regarding their alleged claims, the settlement, or this Settlement Agreement. Further, Class Counsel agrees not to use the Class list for purposes of soliciting claims against PSI, however nothing herein shall prohibit Class Counsel from posting information concerning this Lawsuit on Class Counsel's website. This Paragraph shall not apply to communications between any plaintiff and their attorneys, any disclosure or statement relating to any proceedings to enforce the terms of this Agreement, any disclosures compelled by any government agency investigation or as otherwise expressly authorized by law or lawful process of any administrative, judicial or adjudicative authority.

XIV. NOTICES

47. All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally, e-mailed or mailed, postage prepaid, by first-class mail to the undersigned persons at their respective addresses as set forth herein:

Counsel for Plaintiffs:

Colleen M. McLaughlin
Law Offices of Colleen M. McLaughlin
1751 S. Naperville Rd. Ste 209
Wheaton, IL 60189
(O) 630-221-0305
(F) 630-221-0706

colleen@cmmc-employmentlaw.com
admin@cmmc-employmentlaw.com

Counsel for PSI:

Lionel M. Schooler
Jackson Walker LLP
1401 McKinney St., Suite 1900
Houston, TX 77010
(O) 713-752-4516
(F) 713-308-4156
lschooler@jw.com

XV. REPRESENTATION BY COUNSEL

48. The Named Plaintiffs acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that they have authorized Class Counsel to sign this Agreement on their behalf and on behalf of the Settlement Class.

XVI. NO ADMISSION OF LIABILITY

49. The Settling Parties agree that liability for the actions that are the subject matter of this Agreement are denied and disputed by PSI. This Agreement and the settlement are a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances. The Settling Parties further acknowledge and agree that this Agreement and the settlement shall not be used to suggest an admission of liability in any dispute they may have now or in the future with respect to any person or entity. Neither this Agreement nor anything herein, nor any part of the negotiations had in connection herewith, shall constitute evidence with respect to any issue or dispute other than for purposes of enforcing this Agreement.

XVII. PARTIES' AUTHORITY

50. Class Counsel and Counsel for PSI warrant and represent that they are expressly authorized to take all appropriate action required or permitted to be taken by their respective clients pursuant to this Agreement in order to effectuate its terms. Class Counsel also warrants to PSI that they currently do not represent any person other than the Settlement Class purporting to have claims against

PSI or who allege that they were owed unpaid wages by PSI under the Fair Labor Standards Act or any state or local wage law.

XVIII. MUTUAL FULL COOPERATION

51. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement and secure the Court's final approval of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of this Settlement Agreement.

XIX. MISCELLANEOUS TERMS

A. NO ASSIGNMENT

52. The Named Plaintiffs and those Recipients who are signing a Release as part of this Agreement represent and warrant that they have not assigned or otherwise transferred to any other person or entity, including any attorney, any interest in any claim, demand, action and/or cause of action he or she has, or may have, or may claim to have, against the Released Parties.

B. MODIFICATION OF AGREEMENT

53. This Agreement may not be modified or amended except in writing, signed by the affected Settling Parties or the respective counsel of record for the Settling Parties and as approved by the Court.

C. CONSTRUCTION AND INTERPRETATION

54. Negotiation of Agreement. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement, or any specific term or condition thereof. The Named Plaintiffs and PSI participated in the negotiation and drafting of this Agreement

and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiffs nor PSI may claim that any ambiguity in this Agreement should be construed against the other.

55. No Reliance on Representations or Extrinsic Evidence. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other oral or written representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Settling Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.

56. Controlling Law. This Agreement shall be subject to, governed by, construed, enforced and administered in accordance with the Fair Labor Standards Act and the laws of the State of Illinois, both in its procedural and substantive aspects, and without regard for the principle of conflict of laws.

57. Counterparts. This Agreement, any amendments or modifications to it, and any other documents required or contemplated to be executed in order to consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. A photocopy, facsimile, or digital image of an executed counterpart shall be enforceable and admissible as an original.

58. Binding Effect of Agreement. This Agreement is binding upon and shall inure to the benefit of the Settling Parties to this Agreement. Without limiting the foregoing, this Agreement specifically shall inure to the benefit of PSI as well as its present and former owners, stockholders, predecessors, successors, joint ventures, assigns, agents, directors, officers, board members, members, managers, employees, representatives, insurers, attorneys, parents, subsidiaries, benefit plans, plan fiduciaries, affiliated divisions and companies, and all persons acting by, through, under or in

concert with any of them. Also, without limiting the foregoing, this Agreement shall be binding upon the heirs, assigns, administrators, executors, beneficiaries, conservators, and successors of the Named Plaintiffs and the Opt-In Claimants.

59. Voluntary Signature. All Settling Parties agree that they have signed this Agreement or authorized their counsel to sign this Agreement on their behalf, knowingly, voluntarily, with full knowledge of its significance, and without coercion.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated by their signatures below.

Named Plaintiffs JESSICA BERGER and TIMOTHY RENDACK

BY: s/Colleen McLaughlin
Colleen McLaughlin, one of their attorneys

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Defendants PERRY'S STEAKHOUSE OF ILLINOIS,
HOWARD CORTES and JEFFREY PAGNOTTA

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