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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

MADELYN CASILAO, HARRY  
LINCUNA, and ALLAN GARCIA, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

HOTELMACHER, LLC, dba HOLIDAY  
INN EXPRESS; STEAKMACHER, LLC,  
dba MONTANA MIKE'S STEAKHOUSE;  
SCHUMACHER INVESTMENTS, LLC,  
dba WATER ZOO; APEX USA, INC.;  
WALTER SCHUMACHER; and  
CAROLYN SCHUMACHER,

Defendants.

Case No. 5:17-cv-00800-SLP

**CLASS ACTION SETTLEMENT  
AGREEMENT**

1 Plaintiffs, MADELYN CASILAO, HARRY LINCUNA, and ALLAN GARCIA, on behalf  
2 of themselves and all others similarly situated ("Class Representatives" or "Plaintiffs"); and  
3 Defendants, HOTELMACHER, LLC, dba HOLIDAY INN EXPRESS; STEAKMACHER, LLC,  
4 dba MONTANA MIKE'S STEAKHOUSE; SCHUMACHER INVESTMENTS, LLC, dba  
5 WATER ZOO; APEX USA, INC.; WALTER SCHUMACHER; and CAROLYN SCHUMACHER  
6 ("Defendants"), recognizing that this Class Action Settlement Agreement ("Agreement") is subject  
7 to approval by the Court, hereby agree as follows:

8 **I. PARTIES TO THIS AGREEMENT**

9 As set forth above, the Parties to this Agreement are the Class Representatives and the  
10 Defendants. On the Date of Finality, the Parties to this Agreement also shall include each Class  
11 Member, as that term is defined below.

12 **II. FAIRNESS OF SETTLEMENT**

13 The Parties stipulate and agree that the settlement set forth in this Agreement, and its terms,  
14 are fair, just, reasonable, adequate, and equitable to the Class Members, are the product of good  
15 faith, arm's-length negotiations between the Parties, are consistent with public policy, and fully  
16 comply with applicable provisions of law.

17 **III. DEFINITIONS**

18 The following definitions apply with respect to this Agreement and all related documents:

19 **A.** The "Action" is the lawsuit *Madelyn Casilao et. al. v. Hotelmacher, LLC et. al*, case  
20 number 17-cv-00800-SLP, filed in the United States District Court for the Western District  
21 of Oklahoma.

22 **B.** The "Class" is defined as follows:

23 All Filipino nationals who obtained H-2B visas at any time from January  
24 1, 2008 through December 31, 2014, who were admitted to the United  
25 States as H-2B temporary foreign workers, and for whom one of the  
26 Defendants was the H-2B petitioner or de facto employer upon arrival in  
27 the United States.

28 The Class includes the following 23 people: Marife Acompanado, Rhodan Arizala, Arnel

1 Balbalosa, Jonathan Calasan, Madelyn Casilao, Marygene Casilao, Reniel Cuerdo, German  
2 de los Santos, Allan Garcia, Benjamin Garcia, Wenafel Gelaga, Harry Lincuna, Pablo  
3 Martin, Romina Mesina, Ofelia Mora, Antonio Pangan, Miscella Quidlat, John Roa,  
4 Fernando Sarmiento, Alberto Vigilia, Lorna Villaflor, and Lorela Villejo.

5 **C.** "Class Counsel" means Megan Lambert of the ACLU of Oklahoma, Christopher  
6 Willett and Caitlin Boehne of Equal Justice Center, George Warner of Legal Aid at Work,  
7 and pro bono counsel Eben Colby, Catherine Fisher, and Alyssa Musante.

8 **D.** "Class List" is a list of the 23 people included in the Class, which shall include all  
9 known contact information for Class Members, including emails, phone numbers,  
10 addresses, Social Security Numbers, and ITINs, to the extent available to Class Counsel  
11 and/or Defendants.

12 **E.** "Class Member" means a member of the Class who does not properly ask to be  
13 excluded from the class.

14 **F.** "Class Member Notice" means the form of Court-approved notice of this Agreement  
15 that is disseminated to Class Members. The Parties shall propose that the Court approve the  
16 form of notice attached as Exhibit A hereto.

17 **G.** "Class Representatives" or "Plaintiffs" means Madelyn Casilao, Harry Lincuna, and  
18 Allan Garcia.

19 **H.** "Court" means the United States District Court for the Western District of  
20 Oklahoma.

21 **I.** "Date of Finality" means the later of (i) the date the Court enters the Final Approval  
22 Order, and dismisses the Action with prejudice, or (ii) the date the Final Approval Order  
23 becomes Final, as defined below.

24 **J.** "Defendants" means Hotelmacher, LLC, DBA Holiday Inn Express; Steakmacher,  
25 LLC, DBA Montana Mike's Steakhouse; Schumacher Investments, LLC, DBA Water Zoo;  
26 Apex USA, Inc.; Walter Schumacher; and Carolyn Schumacher.

27 **K.** "Defendants' Counsel" means Mark K. Stonecipher, C. Eric Shephard, and A.  
28 Wayne Billings of Fellers, Snider, Blakenship, Bailey & Tippens, PC.

1           **L.**     "Fee Award" means the amount awarded by the Court as compensation for the  
2 services provided by Class Counsel and the expenses incurred by Class Counsel in  
3 connection with the Action.

4           **M.**     "Final" means the later of (a) the date that the Final Approval Order is entered by  
5 the Court; or (b) if there are objections to the settlement which are not withdrawn, one  
6 business day following the date upon which the time expires for filing or noticing any  
7 appeal of the Final Approval Order; or (c) if an appeal, review, or writ from the Approval  
8 Order is sought, one business day following the date of dismissal or completion of any  
9 appeal, in a manner that finally affirms and leaves in place the Final Approval Order  
10 without any material modifications, and all proceedings arising out of the appeal(s)  
11 (including, but not limited to, the expiration of all deadlines for motions for reconsideration  
12 or rehearing or petitions for review and/or certiorari, all proceedings ordered on remand,  
13 and all proceedings arising out of any subsequent appeal(s) following decisions on remand).

14           **N.**     "Final Approval Hearing" means the hearing to be held before the Court pursuant to  
15 Federal Rule of Civil Procedure 23(e) to determine whether the Settlement Agreement  
16 should receive final approval by the Court.

17           **O.**     "Final Approval Order" means the order and final judgment of the Court approving  
18 the Settlement, in substantially the form submitted in connection with Plaintiffs' Motion for  
19 Final Approval of the Settlement.

20           **P.**     "Individual Settlement Payment" means payment to be made to Class Members  
21 pursuant to the terms of this Agreement.

22           **Q.**     "Notice" means the form of Court-approved notice of this Agreement that is  
23 disseminated to Class Members. The Parties shall propose that the Court approve the form  
24 of notice attached as Exhibit A hereto.

25           **R.**     "NSF" means the TSA less all of the following: the Service Awards, the Fee Award,  
26 and the charges and expenses of the Settlement Administrator as set forth in Section V.D.

27           **S.**     "Person(s)" means natural people and all types of entities and organizations.

28           **T.**     "Preliminary Approval Order" means the order of the Court preliminarily approving

1 the Settlement Agreement, in substantially the form submitted in connection with Plaintiffs'  
2 Motion for Entry of Preliminary Order.

3 U. "Service Award" means the amount of incentive or service award awarded by the  
4 Court to the Class Representatives.

5 V. "Settlement Administrator" means CPT Group, an independent contractor to be  
6 retained by Class Counsel and approved by the Court.

7 W. "Settlement Fund" means the interest-bearing settlement fund account to be  
8 established and maintained by the Settlement Administrator.

9 X. "Release Period" means January 1, 2008, through December 31, 2014.

10 **IV. TEMPORARY STAY**

11 The Parties agree that the Action shall be stayed in all other respects pending the settlement  
12 approval process.

13 **V. FINANCIAL TERMS OF THE SETTLEMENT**

14 **A. The Total Settlement Amount**

15 Subject to court approval, in consideration of all the promises and agreements set forth in  
16 the Agreement, Defendants shall pay, or cause to be paid, Seven Hundred Thirty Thousand Dollars  
17 (\$730,000.00) ("Total Settlement Amount" or "TSA") to resolve the Action. The TSA shall  
18 represent the maximum amount Defendants can ever be required to pay for: (1) Class Members in  
19 exchange for a release of all claims asserted or that could have been asserted in the Action on their  
20 behalf; (2) all claims for reimbursement by the Settlement Administrator for expenses associated  
21 with administering or effectuating the Settlement; (3) all claims for an award of Plaintiffs'  
22 Counsel's attorneys' fees; (4) all claims for Plaintiffs' Counsel's reasonable litigation expenses; and  
23 (5) Service Awards.

24 **B. Class Representative Service Awards**

25 Defendants will not object to a request to the Court for approval of payments of Service  
26 Awards to the Class Representatives in an aggregate amount of up to \$45,000.00, to be distributed  
27 in the amount of up to \$15,000 to each Class Representative. The amount of these Service Awards  
28 approved by the Court shall be paid solely from the TSA to the Class Representatives for their

1 services and risks in connection with serving as Class Representatives and being named as  
2 Plaintiffs. The Service Awards to each of the Class Representatives will be reported by IRS Form  
3 1099. Each Class Representative will be responsible for characterizing this tax payment for tax  
4 purposes and for paying any taxes owing on said amount. The Service Awards shall be in addition  
5 to any Individual Settlement Payment to the Class Representatives for their claims as Class  
6 Members. Should the Internal Revenue Service or some other taxing authority take the position  
7 that some or all of the Service Awards constitute taxable income and/or wages for income tax and  
8 withholding purposes, the Class Representatives shall assume responsibility of remitting to the  
9 Internal Revenue Service and any other relevant taxing authority, any taxes or withholdings  
10 required by law, if any, to be paid on and/or withheld from the enhancement payment. Defendants  
11 make no representations and undertake no liability of any kind as to the tax consequences or proper  
12 tax treatment of the Service Awards.

13 **C. Class Counsel's Attorneys' Fees, Costs and Litigation Expenses**

14 Within 21 days of the Court entering the Preliminary Approval Order, Class Counsel shall  
15 submit an application for an award of attorneys' fees, costs, and litigation costs in an amount not to  
16 exceed \$215,000. The amount of the Fee Award shall be determined by the Court based on the  
17 application from Class Counsel. Defendants shall not object to, oppose, or otherwise discourage  
18 the Court from approving any such fee and cost application in this amount.

19 Any Fee Award determined by the Court shall be paid solely from the TSA and shall not  
20 constitute payment to any Class Member(s). The Fee Award approved by the Court shall  
21 encompass: (a) all work performed, costs, and expenses related to the investigation, prosecution,  
22 and settlement of the Action incurred through the date of this Agreement; (b) all work to be  
23 performed, expenses, and costs to be incurred in connection with approval by the Court of the  
24 settlement; and (c) all work, costs, and expenses incurred in connection with administering the  
25 settlement through dismissal of the Action with prejudice.

26 Class Counsel shall provide the Settlement Administrator with W-9s, and the payment of  
27 attorneys' fees, expenses, and costs to them will be reported by IRS Form 1099.  
28

1           **D. Charges of the Settlement Administrator**

2           The charges of the Settlement Administrator for administration of the settlement,  
3 computation, and mailing of Individual Settlement Payments, administration of the qualified  
4 settlement fund and otherwise administering the claims process, and all costs and expenses  
5 incurred related thereto, shall be a part of, and paid solely from, the TSA, and shall not exceed  
6 \$11,500 without Court approval. The settlement administration costs will be reported by IRS Form  
7 1099.

8           **E. Net Settlement Fund**

9           The NSF is defined as the TSA less all of the following: the Service Awards, the Fee  
10 Award, and the charges and expenses of the Settlement Administrator. The NSF will be no less  
11 than \$458,500.

12           **F. Calculation of Payments to Class Members**

13           Class Members will receive an Individual Settlement Payment as a proportionate share of  
14 the NSF based on the following calculations.

15           Based on the records provided by Defendants to Plaintiffs, Plaintiffs' counsel will determine  
16 the number of days each Class Member was in Clinton, Oklahoma, and employed by Defendants  
17 during the Release Period, using personnel and payroll information provided by Defendants during  
18 discovery. Plaintiffs believe that Class Members were in Clinton, Oklahoma, while working for  
19 Defendants for a total of 1,681 days. The average settlement payment will be no less than  
20 \$19,934.75 per class member.

21           **G. Nature of Individual Settlement Payments to Class Members**

22           The settlement payments described herein cover and resolve all claims for damages, fees,  
23 penalties, and interest that were asserted in the Action. For purposes of administering the  
24 settlement, the Parties agree that the Individual Settlement Payments to Class Members will be  
25 characterized and reported a form 1099-MISC (not subject to withholdings or payroll taxes), as the  
26 vast majority of Plaintiffs' potential recoverable damages constitute alleged non-wage damages,  
27 including unreimbursed expenses for food, housing, and flights, emotional distress, and punitive  
28 damages.

1 **VI. PROCEDURES FOR PRELIMINARY APPROVAL AND NOTICE TO CLASS**

2 **A. Request for Preliminary Approval**

3 The Parties shall cooperate fully in requesting preliminary and final approval of this  
4 Agreement by the Court, including determination by the Court that the settlement is fair,  
5 reasonable, and adequate, and approval of the proposed forms of Class Member Notice, orders, and  
6 other documents necessary to implement this Agreement.

7 Within fourteen (14) days of the execution of this Agreement, Plaintiffs, through Class  
8 Counsel, shall apply to the Court for entry of the Preliminary Approval Order, which shall include,  
9 among other provisions, a request that the Court:

10 (i) approve the Parties' selection of Settlement Administrator and Escrow Agent;

11 (ii) preliminarily approve this Agreement for purposes of disseminating notice to the Class;

12 (iii) approve the form and contents of the Notice;

13 (iv) provide that Class Members may object to this Agreement prior to the Final Approval  
14 Hearing according to a designated schedule; and

15 (v) schedule a Final Approval Hearing to (1) review comments and/or objections regarding  
16 this Agreement, (2) consider the fairness, reasonableness, and adequacy of this Agreement, (3)  
17 consider whether the Court should issue a Final Approval Order approving this Agreement,  
18 awarding any Fee Awards, and dismissing this Action with prejudice, and (4) consider such other  
19 matters as the Court may deem appropriate.

20 **B. Class Member Identifying Information**

21 Class Counsel and Defendants have met and conferred and agreed that the Class includes  
22 the 23 people enumerated above. Within three (3) business days of the Court entering the  
23 Preliminary Approval Order, Class Counsel shall present the Class List to the Settlement  
24 Administrator. The Class List will contain all known contact information for Class Members,  
25 including emails, phone numbers, addresses, Social Security Numbers, and ITINs, to the extent  
26 available to Class Counsel and/or Defendants.

27 **C. Mailing of Class Member Notice**

28 No later than 15 business days after the Court orders issuance of notice to the Class,, the



1 Settlement Administrator or Class Counsel shall electronically distribute and mail the approved  
2 Class Member Notice for whom an email address or mailing address is known. Any Class Member  
3 Notice returned undeliverable shall be traced once to obtain a new address and be re-mailed by first  
4 class mail. The addresses to which these documents are to be mailed shall be determined by the  
5 Settlement Administrator or Class Counsel from the Class List, subsequent searches the Settlement  
6 Administrator and/or Class Counsel performs, and by such other means as the Settlement  
7 Administrator and/or Class Counsel customarily uses to locate Class Members in administration of  
8 class action settlements. The Class Member Notice will also be available online at a website set up  
9 by Class Counsel or the Class Administrator.

10 The Parties agree that compliance with the procedures described in this paragraph shall  
11 constitute due and sufficient notice to Class Members of this proposed settlement and the Final  
12 Approval Hearing and shall satisfy the requirement of due process.

13 At least five (5) days prior to the Final Approval Hearing, the Settlement Administrator  
14 and/or Class Counsel shall provide the Court with a declaration of due diligence and proof of  
15 mailing with regard to (i) the mailing and electronic distribution of the Class Member Notice, (ii)  
16 attempts to locate Class Members, and (iii) the number of Class Members whose Class Member  
17 Notices were returned as undeliverable after all attempts to locate a correct address.

18 **D. Contents of Class Member Notice**

19 The Class Member Notice shall be in English and shall fairly inform the Class Members of  
20 the general nature of this action, the financial and other terms of this Agreement particularly  
21 significant to the Class Members, and the general procedures and deadlines for submitting an  
22 objection to the settlement or excluding oneself from the class, in simple and easily understood  
23 language. The Class Member Notice shall be individualized, identifying the respective Class  
24 Member by his or her name and current email or mailing address, and providing the total number  
25 of days spent in Clinton, Oklahoma, by the respective Class Member as calculated by Class  
26 Counsel based on Defendants' records, his or her expected Individual Settlement Payment, and the  
27 total expected class payment. The notice shall have a "Babel notice" in Tagalog that informs  
28 claimants, in Tagalog: "This notice is being sent because you are a member of a class action that

1 has settled. To learn more about your rights and your ability to receive payment if the settlement is  
2 approved, call (888) 820-1293 or send an email to schumacher\_lawsuit@legalaidatwork.org and a  
3 lawyer that represents the class will call you back with a Tagalog interpreter." The Class Member  
4 Notice shall inform Class Members of the ability to provide a change of address and information  
5 about social security numbers or ITIN numbers by email, phone, or a website form. The Notice  
6 shall include a claim form that allows Class Members the ability to report whether they would like  
7 to receive the Individual Settlement Payment by mail, bank transfer, or select forms of digital  
8 payment, using a digital service provider such as PayPal. Unless modified by the Court, the Class  
9 Member Notice shall read substantially as set forth in Exhibit A hereto.

10 **E. Opting Out of the Class**

11 \_\_\_\_\_ The members of the Class will be provided with a renewed opportunity to exclude  
12 themselves from the class, by no later than sixty (60) days after the Class Member Notice was  
13 initially distributed. The date of mailing of the Class Member Notice to the objecting Class  
14 Member shall be conclusively determined according to the records of the Class Counsel. Class  
15 members can exclude themselves by sending a request to be excluded to Class Counsel by mail or  
16 email.

17 **F. Objections to Settlement**

18 In order to object to this Settlement, or any term of it, the Class Member making the  
19 objection must, by no later than sixty (60) days after the Class Member Notice was initially  
20 distributed to the objecting Class Member, electronically file with the Court a written statement of  
21 the grounds of objection, signed by the objecting Class Member or his or her attorney, along with  
22 all supporting papers. The date of mailing of the Class Member Notice to the objecting Class  
23 Member shall be conclusively determined according to the records of the Settlement Administrator  
24 and Class Counsel. The written objection shall include his or her name and address, include all  
25 arguments, citations, and evidence supporting the objection (including copies of any documents  
26 relied on), state that he or she is a Class Member, and provide a statement whether the objector  
27 intends to appear at the Final Approval Hearing, with or without counsel, accompanied by the  
28 signature of the objecting Class Member. The Court retains final authority with respect to the

1 consideration and admissibility of any of Class Member's objections. Counsel for the Parties shall  
2 file any response to the objections submitted by objecting Class Members at least seven (7) days  
3 before the date of the Final Approval Hearing.

4 **G. Class Settlement Website**

5 Within 15 days of Preliminary Approval Order, the Settlement Administrator or Class  
6 Counsel shall establish a public website, which shall include instructions as to how to receive a  
7 Class Member Notice and to provide additional or corrected Class Member contact information.  
8 The site shall also make available a copy of this Agreement, the prior notice of certification of the  
9 Class that was published and distributed to Class Members pursuant to the order of the Court  
10 entered on December 10, 2021, and the Preliminary Approval Order, Class Counsel's applications  
11 for attorneys' fees and costs (when filed with the Court), and the papers filed in support of final  
12 approval of this Agreement (when filed with the Court). The website shall also provide up to date  
13 information regarding the date, time, and location of the Final Approval Hearing.

14 **VII. PROCEDURES FOR FINAL APPROVAL**  
15 **AND DISTRIBUTION OF SETTLEMENT PROCEEDS**

16 **A. Final Approval of Settlement**

17 No later than twenty-eight (28) calendar days before the Final Approval Hearing, or by  
18 such other deadline as specified by the Court, Class Counsel shall apply to the Court for entry of  
19 the Final Approval Order, which shall include, among other provisions, a request that the Court:

- 20 (a) dismiss the Action with prejudice and without costs, except as contemplated by this  
21 Agreement;
- 22 (b) decree that neither the Final Approval Order nor this Agreement constitutes an  
23 admission by any Defendant or Released Party of any liability or wrongdoing whatsoever;
- 24 (c) bar and enjoin all Class Members from asserting any of Plaintiffs' Released Claims  
25 against any of the Released Parties;
- 26 (c) bar and enjoin Defendants from asserting any of Defendants' Released Claims  
27 against any of the Plaintiffs or any Class Member;
- 28 (d) determine that this Agreement is entered into in good faith and represents a fair,

1 reasonable, and adequate settlement that is in the best interests of the Class Members; and

2 (e) preserve the Court's continuing and exclusive jurisdiction over the Parties and all  
3 Class Members to administer, construe, and enforce this Agreement in accordance with its terms  
4 for the mutual benefit of the Parties, but without affecting the finality of the Final Approval Order.

5 **B. Qualified Settlement Fund**

6 Within ten (10) days of the Court entering the Preliminary Approval Order, the Defendants  
7 shall send to the Settlement Administrator the TSA, with which the Settlement Administrator shall  
8 establish the Settlement Fund. Should the Court deny final approval of the settlement, the  
9 Settlement Administrator shall return the TSA to Defendants minus reasonable settlement  
10 administration costs incurred to date. The Settlement Administrator assumes all responsibility for  
11 tax reporting requirements for and payments of contributions and withholdings from the TSA, as  
12 well as for any and all obligations regarding notice, tax reporting, and escheat requirements (which  
13 the Parties do not intend) through the Settlement Fund.

14 **C. Date and Method of Payments; First Distribution**

15 Within ten (10) days of the Date of Finality, the Settlement Administrator shall mail and/or  
16 disburse the Individual Settlement Payments to each Class Member at the address shown on the  
17 Class Member Notice, or any later corrected address, or deliver those payments by ACH, wire  
18 transfer, or via digital transfer using a digital service provider such as PayPal, Zelle, Venmo, as  
19 requested by the Class Members. Also within ten (10) days after the Date of Finality, any court-  
20 approved Service Awards to be paid to the Class Representatives shall be transmitted by the  
21 Settlement Administrator to the Class Representatives via separate check, ACH, wire transfer, or  
22 digital transfer made payable to each individual Class Representative. Also within ten (10) days  
23 after the Date of Finality, the Fee Award shall be paid by the Settlement Administrator by checks  
24 or wire transfers, payable to Class Counsel as ordered by the Court. Proof of all of these payments  
25 by the Settlement Administrator will be provided to Class Counsel and Defendants' Counsel by the  
26 Settlement Administrator within seven (7) business days after the last payment is made. Class  
27 Counsel shall file such proof of payment with the Court if so ordered.

28

1           **D.       Payments to Settlement Administrator**

2           The Settlement Administrator shall submit a monthly invoice to the Class Counsel and  
3 Defendants' Counsel and, if approved by Class Counsel and Defendants' Counsel, such invoices  
4 shall be paid solely out of the TSA. The Settlement Administrator shall submit a final invoice to  
5 Class Counsel and Defendants' Counsel, including a reasonable estimate of any remaining  
6 settlement administration work to be done in order to complete the settlement administration  
7 process, within five (5) days after entry of the Final Approval Order, which if approved by Class  
8 Counsel and Defendants' Counsel, will be paid solely from the TSA. In no event shall monies paid  
9 to the Settlement Administrator exceed \$11,500 without approval by the Court.

10           **E.       Attempt to Locate Additional Class Members and Second Distribution**

11           Class Members shall have 60 days from the date of the original mailing of the Individual  
12 Settlement Payments made by check to cash them. Any payments that remain undeposited upon the  
13 expiration of the 60-day period will be void. The Settlement Administrator will give written notice  
14 to Class Counsel of any uncashed checks fifteen (15) business days before the expiration of the 60-  
15 day period, so that Class Counsel can remind Class Members of the payments.

16           The Settlement Administrator will give written notice to Class Counsel and Defendants'  
17 Counsel of the total amount of funds represented by the uncashed checks, plus any interest earned  
18 on such amounts and remaining in the NSF, within five (5) business days after the expiration of the  
19 60-day period.

20           Within 10 days after the expiration of the 60-day period, the Settlement Administrator will  
21 give written notice by mail and email to Class Members who did not cash an initial Individual  
22 Settlement Payment, and provide them 30 days from the date of mailing to request that the check  
23 be sent to a new address or resent to the same address, or to request that payment be delivered by  
24 direct deposit or via digital transfer using a digital service provider such as PayPal, Zelle, Venmo.

25           Within 14 days of the deadline for Class Members to request a new check, provide updated  
26 address information, or request electronic payment, the Settlement Administrator will send new  
27 Individual Settlement Payment checks to Class Members who did not cash the initial checks, if the  
28 Class Member requested a new check or checks be sent to them, or deliver those payments by

1 direct deposit or via digital transfer using a digital service provider such as PayPal, Zelle, Venmo,  
2 if requested by the Class Member. Class Members shall have 60 days from the date of the mailing  
3 of these Individual Settlement Payment checks to cash them.

4 **F. Additional Distribution and Cy Pres Distribution**

5 Any checks sent remaining uncashed upon the expiration of the second 60-day period will  
6 be void. The amount represented by uncashed checks shall be paid via an additional distribution to  
7 Class Members who cashed their checks, on a pro-rata basis according to the formula used to  
8 calculate the original Individual Settlement Payments, and via the same method of payment as the  
9 initial payment.

10 There shall be no additional distribution if the aggregate amount remaining from the  
11 uncashed checks is less than \$2,000. Should such remaining funds total less than \$2,000, they shall  
12 be paid to Towards Justice as a *cy pres* beneficiary, as will any amounts represented by checks and  
13 payments from the additional distribution that remain uncashed or undeposited 60 days after  
14 mailing.

15 **VIII. RELEASES AND BARS**

16 **A. Mutual Release**

17 On the Date of Finality, the Plaintiffs and each Class Member fully, finally, and forever  
18 release, settle, and compromise any and all claims, counterclaims, cross-claims, defenses,  
19 controversies, and causes of action against Defendants that arise out of their employment and/or  
20 any other previous dealings with the Defendants during the Release Period (including any claims in  
21 contract, tort, equity, statute, common law, or otherwise that were or could have been asserted  
22 against Defendants in this Action) (the "Plaintiffs' Released Claims"). This release extends to  
23 Defendants and their respective related individuals/entities, agents, employees, principals,  
24 representatives, attorneys-in-fact, legal counsel, predecessors, successors, and assigns (the  
25 "Released Parties").

26 The Defendants fully, finally, and forever release, settle, and compromise any and all  
27 claims, counterclaims, cross-claims, defenses, controversies, and causes of action they may have  
28 against Plaintiffs and each Class Member that arise out of the Plaintiffs' and each Class Member's

1 employment and/or any other previous dealings with the Defendants during the Release Period  
2 (including any claims in contract, tort, equity, statute, common law, or otherwise that were or could  
3 have been asserted against the Plaintiffs or each Class Member in this Action) (the "Defendants'  
4 Released Claims").

5 This Agreement thereby constitutes a covenant not to sue on or further prosecute the claims  
6 being released herein.

7 The Parties are aware that they may hereafter discover claims or facts in addition to or  
8 different from those they now know or believe to be true. Nevertheless, it is the intention of the  
9 Parties to fully, finally, and forever settle and release the claims being released herein, whether  
10 now known and/or which may become known in the future. Furthering such intention, the release  
11 given herein shall be and remain in effect as a full and complete release of all such matters  
12 notwithstanding discovery or existence of any additional or different claims or facts relative  
13 thereto. The Parties waive the right to rely upon any statute, rule, common law doctrine, principle  
14 of equity, or other law or theory which precludes the release of claims, causes of action, suits, or  
15 damages arising from facts or legal theories which are not known or are different from those  
16 known when a release is executed.

17 **B. Dismissal with Prejudice of the**  
18 **Class Representatives in the Philadelphia Litigation**

19 Within five (5) days of the Parties' execution of this Agreement, Defendants will submit a  
20 written request to Philadelphia Indemnity Insurance Company ("Philadelphia") that Philadelphia  
21 take all steps necessary to have the Class Representatives dismissed with prejudice from the action  
22 filed in the United States District Court for the Western District of Oklahoma, Case No. CIV-17-  
23 1234-SLP (the "Philadelphia Litigation"), with said dismissal to note that, as between the Class  
24 Representatives and Philadelphia, the Class Representatives and Philadelphia are to bear their own  
25 expenses including, but not limited to, costs, attorney fees, and expert witness fees.

26 **C. MMSEA Compliance**

27 Plaintiffs agree and acknowledge that all Class Members have been advised, or will be  
28 advised by their counsel, that any payment to any Class Member is the sole responsibility of such

1 Class Member or their representatives. Plaintiffs further agree and acknowledge that each Class  
2 Member and/or his/her/their estate, if applicable, will agree to investigate and to assume any  
3 responsibility and/or liability to pay any current Medicare liens, Medicare Advantage Plan liens,  
4 Medicaid liens, and/or private health insurance liens that may be related to the alleged injuries  
5 and/or damages at issue in the Action. Plaintiffs do not believe there are any such liens, and  
6 Plaintiffs and the class did not seek damages for physical harm or medical expenses. Further, each  
7 Class Member and/or his/her/their estate, if applicable, agrees to pay any future Medicare,  
8 Medicare Advantage Plan, Medicaid, and/or private health insurance liens that may arise that are  
9 determined to be related to the alleged injuries and/or damages at issue in the Action. Class  
10 Counsel agrees to withhold sufficient funds from the TSA to fully satisfy any and all Medicare,  
11 Medicare Advantage plan, Medicaid, private health insurance, or any other liens that may exist. In  
12 the event such a lien (Medicare, Medicare Advantage Plan, Medicaid, private health insurance, or  
13 any other liens that may exist) does in fact exist, Class Counsel shall provide Defendants with a  
14 copy of any and all correspondence reflecting that any such liens have been fully satisfied. Each  
15 Class Member agrees, to the extent of any payment to such Class Member, to indemnify, defend,  
16 and hold harmless Defendants and Philadelphia from any action by Medicare seeking payment of  
17 past, current, or future medical expenses that such Class Member has received. Class Members  
18 shall further hold Defendants and Philadelphia harmless from any and all adverse consequences in  
19 the event any payment to a Class Member under this Agreement results in the loss of right to Social  
20 Security and/or Medicare benefits to the extent the Class Member would have been entitled to  
21 those benefits in the absence of such payment.

22 **IX. GENERAL PROVISIONS**

23 **A. Entire Agreement**

24 This Agreement constitutes the entire agreement between the Parties relating to the  
25 settlement of this Action, and is the final, complete, and exclusive expression of the terms and  
26 conditions of their agreement. Any and all prior agreements, representations, negotiations, and  
27 understandings, oral or written, express or implied, are hereby suspended and merged herein.  
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**B. Authority**

The signatories hereto represent, warrant, and certify that they have the right, power, and authority to enter into and be bound by the terms of this Agreement.

Class Counsel warrants and represents that it is authorized by each Class Representative, and Defendants' Counsel warrants that it is authorized by Defendants, to take all appropriate action required to effectuate the terms of this Agreement, except for signing any documents, including but not limited to this Agreement, that are required to be signed by the Parties.

**C. Governing Law**

All terms of this Agreement shall be governed by and interpreted according to the laws of the State of Oklahoma, without giving effect to conflict of laws principles. The exclusive forum for any dispute arising out of, related to, or connected in any way with this Agreement shall be the United States District Court for the Western District of Oklahoma.

**D. Binding on Successors**

This Agreement shall be binding upon, and inure to the benefit of, the successors of the Parties.

**E. Modification Only in Writing**

This Agreement may be amended or modified only by a written instrument signed by all Parties (or their successors in interest) and their counsel.

**F. No Reliance on Representations**

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any party concerning this Agreement.

**G. Construction of This Agreement**

The Parties agree that the terms and conditions of this Agreement are the result of lengthy,

1 intensive, arm's-length negotiations between them, and that this Agreement shall not be construed  
2 in favor of or against any Party by reason of the extent to which any Party or their counsel  
3 participated in the drafting of this Agreement.

4 **H. Assignment**

5 None of the rights, commitments, or obligations recognized under this Agreement may be  
6 assigned by any Party, Class Member, Class Counsel, or Counsel for Defendants without the  
7 express written consent of each other Party and their respective counsel hereto. The  
8 representations, warranties, covenants, and agreements contained in this Agreement are for the sole  
9 benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail  
10 any remedy to any other person.

11 **I. No Admission of Liability**

12 The Parties acknowledge that they make *no admission of liability* by entering into this  
13 Agreement. Rather, the Parties have entered into this Agreement solely to avoid the burden,  
14 expense, and risk of continuing the Action. The Parties further agree that this Agreement and the  
15 terms and conditions hereof may not be admitted into evidence against any Party in any legal  
16 proceeding for purposes of establishing liability as to any claims asserted other than a claim  
17 seeking to enforce the terms of this Agreement.

18 **J. Mutual Full Cooperation**

19 The Parties agree to fully cooperate with each other to accomplish the terms of this  
20 Agreement, including but not limited to executing such documents and taking such other action as  
21 may reasonably be necessary to implement the terms of this Agreement. The Parties to this  
22 Agreement shall use their best efforts, including all efforts reasonably contemplated by this  
23 Agreement, and any other efforts that may become reasonably necessary by order of the Court or  
24 otherwise to effectuate this Agreement, and the terms set forth herein. In the event the Parties are  
25 unable to reach agreement on the form or content of any document needed to implement the  
26 settlement, or on any supplemental provisions that may become necessary to effectuate the terms of  
27 the settlement, the Parties agree to seek the assistance of the Court.

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**K. Entity Signatures**

Any individual executing this Agreement, or any related document, on behalf of a corporation, entity, or organization who, as shown by the signature blocks below, is to execute this Agreement, hereby warrants and promises for the benefit of all Parties hereto that he or she has been duly authorized by such corporation, entity, or organization to execute this Agreement on behalf of such corporation, entity, or organization.

**L. Counterparts and Electronic Signatures**

This Agreement may be executed separately in counterparts, and a facsimile or electronic signature shall be as good as an original signature. Counterparts shall have the same force and effect as if executed at the same time in one place. A copy of this Agreement shall have the same force and effect as the original.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Walter Schumacher on behalf of  
HOTELMACHER, LLC, dba HOLIDAY INN  
EXPRESS

DATED: \_\_\_\_\_

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Walter Schumacher on behalf of  
STEAKMACHER, LLC, dba MONTANA  
MIKE'S STEAKHOUSE

DATED: \_\_\_\_\_

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Walter Schumacher on behalf of  
SCHUMACHER INVESTMENTS, LLC, dba  
WATER ZOO; APEX USA, INC.; WALTER  
SCHUMACHER; and CAROLYN  
SCHUMACHER

DATED: \_\_\_\_\_

\_\_\_\_\_  
Walter Schumacher, on behalf of APEX USA,  
INC.

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DATED: \_\_\_\_\_

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Walter Schumacher, individually

DATED: \_\_\_\_\_

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Carolyn Schumacher, individually

DATED: \_\_\_\_\_

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Madelyn Casilao

DATED: \_\_\_\_\_

\_\_\_\_\_  
Harry Lincuna

DATED: \_\_\_\_\_

\_\_\_\_\_  
Allan Garcia