

Exhibit A

Settlement Agreement & Release

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

CHASSITY GONZALEZ and JUSTINE
GONZALEZ, individually and on behalf of others
similarly situated,

Index No. 603074/2019

Plaintiffs,

v.

STERLING CATERERS, INC. d/b/a ATERES
AVROHOM, PLATINUM AFFAIRS LTD d/b/a
CONTINENTAL CATERERS, JACOB HIRSCH
and any other related entities,

Defendants.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiffs Chassity Gonzalez and Justine Gonzalez (“Named Plaintiffs”) on behalf of themselves and a putative class of individuals (the “Settlement Class,” as hereinafter defined) on the one hand, and Defendants Sterling Caterers, Inc. d/b/a Arteres Avrohom, Platinum Affairs LTD (collectively, the “Corporate Defendants”), and Jacob Hirsch (“Hirsch”)(collectively, the “Corporate Defendants” and “Hirsch are collectively, the “Defendants”) on the other hand. Defendants, together with Named Plaintiffs constitute the “Parties”.

RECITALS AND BACKGROUND

A. Named Plaintiffs filed a Class Action Complaint against Defendants on March 5, 2019, which is now pending in the Supreme Court of the State of New York, County of Nassau, designated as Index No. 603074/2019.

B. Defendants have defended and intend to vigorously contest every claim in the Action, deny all material allegations of the Action and have asserted numerous meritorious affirmative defenses. Defendants, without admitting any wrongdoing or liability, nevertheless have agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims that have been asserted or could have been asserted in, or that relate in any way whatsoever to the facts and transactions alleged in the Action.

C. Class Counsel (as hereinafter defined) has analyzed and evaluated the merits of the claims made against Defendants and the impact of this Agreement on Named Plaintiffs and the Settlement Class. Based upon their analysis and evaluation of a number of factors, Named Plaintiffs and Class Counsel recognize the substantial risks of continued litigation, including the

possibility that the Action, if not settled now, (i) might not result in any recovery whatsoever, or (ii) might result in a recovery that is less favorable than that which is set forth in this Agreement and that would not occur for several years. Named Plaintiffs and Class Counsel are therefore, satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and that this Agreement is in the best interest of Named Plaintiffs and the Settlement Class.

D. Named Plaintiffs and Defendants, by and through their respective counsel, have engaged in settlement discussions in connection with the potential resolution of the Action, including private mediation on September 18, 2019 with Mediator Martin F. Scheinman, Esq. Mediator Scheinman has independently analyzed and evaluated the merits of the claims made by Plaintiffs against Defendants, the Defendants' defenses to those claims as well as a number of other independent factors and has recommended the settlement based on his conclusion that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interest of the Named Plaintiffs and the Settlement Class. Accordingly, Named Plaintiffs and Defendants – subject to the approval of the Court – have elected to settle the Action pursuant to the terms set forth in this Agreement, which shall be submitted to the Court for approval through the mechanisms set forth below.

E. Strictly for the purpose of settling the Action, and without admitting any wrongdoing or liability, Defendants agree to class certification under §§ 901 and 902 of the New York Civil Practice Law and Rules (“CPLR”) of the Settlement Class as defined in Section 1.36.

F. The Parties agree that if this Agreement is terminated as set forth herein, the Action will proceed as if no settlement had been attempted and this Agreement had not been executed, and the Defendants shall the right to contest, without prejudice, whether the Action should be maintained as a class action and to contest the merits of the claims being asserted in the Action.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Action.

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

1.1 Acceptance Period means the sixty (60) day period beginning from the date of the first mailing of the Notice and Claim Form, during which a Class Member can submit a Claim Form to receive a Settlement Check.

1.2 Action means the lawsuit filed in the Supreme Court of the State of New York, County of Nassau, entitled *Chassity Gonzalez, et al., v. Sterling Caterers, Inc. d/b/a Ateres Avrohom, et al.*, and designated as Index No. 603074/2019.

1.3 Administrator or Settlement Claims Administrator means the third-party administrator who has been selected to mail the Notices and administer the Settlement pursuant to the terms of this Agreement.

- 1.4 Agreement** means this Settlement Agreement and Release.
- 1.5 Approval Motion** means a Motion for Settlement Approval to be filed by Class Counsel seeking court approval of this Agreement.
- 1.6 Authorized Claimant** means each Class Member, or the authorized legal representative of such Class Member, who timely files a Claim Form in accordance with the terms of this Agreement, and who is therefore eligible to receive a Settlement Check. Named Plaintiffs are each deemed Authorized Claimants upon execution of this Agreement and need not submit a Claim Form.
- 1.7 Bar Date or Notice Response Deadline** means the date by which any Class Member who wishes to qualify as an Authorized Claimant must file a Claim Form (i.e. signing and having the Claim Form received by the Settlement Claims Administrator or postmarked by the United States mail service). Subject to the Court's approval and the provisions of Section 2.5F, the Bar Date shall be sixty (60) days after the initial mailing of Notice by the Settlement Claims Administrator. If a Class Member did not receive the Notice or was unable to file the Claim Form within sixty (60) days due to change of address, military service, hospitalization or other extraordinary circumstances, an additional fifteen (15) days will be given to such Class Member to file a Claim Form.
- 1.8 Claim Form** means the Court-approved Claim Form, a form which shall be attached to the Notice of Proposed Settlement, that Class Members must sign and return by the Bar Date as set forth in Section 2.5F. The Claim Form will ask Class Members whether they were or were not recipients of Medicare benefits during the relevant time period.
- 1.9 Class Counsel** means Jeffrey K. Brown, Esq. and Brett R. Cohen, Esq. of Leeds Brown Law, P.C., One Old Country Road, Suite 347, Carle Place, New York 11514.
- 1.10 Class List** shall mean a list in electronic format, preferably Excel, that shall be provided to the Administrator and Class Counsel within sixty (60) days following the execution of this Agreement, and which identifies their (i) names, (ii) last known addresses, (iii) social security numbers, (iv) telephone numbers, and (v) e-mail addresses (only to Administrator).
- 1.11 Complaint** shall mean the Class Action Complaint filed by Named Plaintiffs against Defendants in the Action on March 5, 2019.
- 1.12 Costs and Fees** means and collectively, includes (i) Class Counsel's attorneys' fees, costs, and expenses; (ii) the Settlement Claims Administrator's fees and costs; (iii) the Reserve Fund; and (iv) the Court Approved Service Award payable to the Named Plaintiffs.
- 1.13 Court** shall mean the Supreme Court of the State New York, County of Nassau.
- 1.14 Days** unless otherwise specified in this Agreement, means business days if the specified number is less than ten (10), and calendar days if the specified number is ten (10) or greater.

- 1.15 Defendants** means and includes Sterling Caterers, Inc. d/b/a Ateres Avrohom, Platinum Affairs LTD and any other related entities, and Jacob Hirsch (individually).
- 1.16 Defendants’ Counsel** means Barry Levy, Esq. and Keegan Sapp, Esq. of Rivkin Radler LLP, 926 RXR Plaza, Uniondale, New York 11556.
- 1.17 Employment Taxes** means (1) all taxes and withholdings an employer is required to pay arising out of or based upon the payment of employment compensation in this Action, including FICA, FUTA, and SUTA obligations (“Employer-Side Taxes”), and (2) all ordinary and regular taxes required to be withheld from an employee’s compensation or other income.
- 1.18 Fairness Hearing** means the hearing scheduled at the Court’s discretion in connection with the Approval Motion.
- 1.19 Final Effective Date** means, the later of: (i) forty five (45) days following the expiration of the Notice Response Deadline; or (ii) if an appeal of the Approval Order is timely filed, the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Approval Order has been finally dismissed; (2) the Approval Order has been affirmed on appeal in a form substantially identical to the form of the Approval Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Approval Order has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Approval Order in a form substantially identical to the form of the Approval Order entered by the Court.
- 1.20 Final Settlement Amount** means the sum of the Authorized Claimants’ Share and all Court-approved Costs and Fees.
- 1.21 Gross Settlement Fund** means Three Hundred Seventy Five Thousand Dollars (\$375,000.00), an amount to be used for allocation and calculation purposes that represents the maximum amount that Defendants agree to pay, including all statutory damages, penalties, fines, liquidated damages, interest, attorneys’ fees costs, taxes (including Employer Side Taxes), court costs and any other costs whatsoever, and any and all amounts to be paid to or on behalf of Authorized Claimants, any Court approved Service Award, Settlement Claims Administrator Fees and costs, for complete and final resolution of the Action, subject to any right to terminate the Agreement as set forth herein.
- 1.22 Individual Gross Amount** means the amount allocated to each individual Authorized Claimant pursuant to Sections 3.5A and/or 3.5B prior to any deduction for taxes required to be withheld from employee compensation or other income.
- 1.23 Individual Net Amount** means the amount paid to the individual Authorized Claimants after deduction for taxes required to be withheld from employee compensation or other income, pursuant to Section 3.1C and 3.5E.
- 1.24 Mediator** shall mean Martin F. Scheinman, Esq.

- 1.25 Membrives Litigation** shall mean and include the action entitled *Membrives v. Platinum Affairs LTD, et al.* and designated Index No.: 603295/2016 (Sup. Ct. Nassau County)
- 1.26 Named Plaintiffs** means Chassity Gonzalez and Justine Gonzalez.
- 1.27 Notice(s)** means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit as authorized by the Approval Order.
- 1.28 Objector** means an individual Authorized Claimant who properly files an objection to this Agreement, and does not include an individual who opts out of this Agreement.
- 1.29 Opt-out Statement** means the written, signed statement that an individual Class Member submits indicating he or she has elected to exclude himself or herself (“opt out”) from this Agreement. Any Class Member who does not submit a timely valid Claim Form or an Opt-out Statement waives and releases all Released Class Claims (as defined herein) against the Defendants. A Class Member who submits an Opt-out Statement retains any claims that would otherwise be released pursuant to this Agreement.
- 1.30 Order Granting Approval (“Approval Order”)** means the Order entered by the Court: (i) certifying the Settlement Class; (ii) approving the terms and conditions of this Agreement; (iii) appointing Leeds Brown Law, P.C. as Class Counsel; (iv) directing the manner and timing of providing Notice to the Settlement Class; and (v) setting the dates and deadlines for effectuating the settlement, including date of the mailing of Notice, the Notice Response Deadline, and the date of the Fairness Hearing, if one is to be scheduled; among other things.
- 1.31 Parties** means the Named Plaintiffs, Defendants, and Class Members, collectively.
- 1.32 Qualified Settlement Fund Account (“QSF”)** means the account established and controlled by the Settlement Claims Administrator into which the Defendants will deposit that portion of the Gross Settlement Fund necessary to pay the Final Settlement Amount in accordance with this Agreement. The QSF will be controlled by the Settlement Claims Administrator subject to the terms of this Agreement, the Approval Order. Interest, if any, earned in the QSF will become part of the Reserve Fund.
- 1.33 Released Class Claims** means all wage and hour claims that have been or could have been asserted in the Complaint against the Defendants and all related/associated parties (including Defendants’ insurers), including but not limited to those based on or under Federal law, New York State law or regulation, the Hospitality Wage Order, and/or common law, arising during the Settlement Period, whether known or unknown. The Released Class Claims include, but are not limited to, statutory, constitutional, contractual or common law claims for unpaid wages, gratuities, service charges, tips, interest on such claims, penalties, damages, liquidated damages as well as attorneys’ fees, expenses, disbursements, litigation costs and fees, restitution, equitable or declaratory relief related to such claims.

- 1.34 Reserve Fund** means the fund whereby an amount is set aside within the QSF in case of error or omission to be paid and corrected by the Settlement Claims Administrator via the mechanisms outlined in Section 3.1B.
- 1.35 Service Award** means the portion of the Final Settlement Amount, if any, requested by Named Plaintiffs and approved by the Court as a reasonable incentive award to the Named Plaintiffs for representing the interests of the Settlement Class.
- 1.36 Settlement Class (or Class Members)** means: All individuals who are listed on Exhibit “A” to this Agreement.
- 1.37 Settlement Checks** means checks issued to Authorized Claimants for their allocated share of the Individual Net Amount by the Settlement Claims Administrator as calculated by the Settlement Claims Administrator in accordance with this Agreement.

2. APPROVAL AND PROCEDURE

- 2.1 Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms.
- 2.2 Settlement Class.** Strictly for purposes of settling the Action, and without admitting any wrongdoing or liability, Defendants agree to class certification pursuant to CPLR §§ 901 and 902 to include all Class Members. In the event that the settlement contemplated by this Agreement is not concluded for any reason permitted by this Agreement, then class certification shall be deemed dissolved without prejudice as to Named Plaintiffs’ right to move for such relief or Defendants’ right to oppose such relief.
- 2.3 Settlement Claims Administrator.**
- A. **Retention.** Within fifteen (15) days after the filing of an Approval Motion, Class Counsel shall engage the Settlement Claims Administrator to perform the duties and responsibilities required under this Agreement at a fee (all inclusive) not to exceed \$10,000.
 - B. **Funding Settlement Claims Administrator.** The Settlement Claims Administrator shall be paid from the Qualified Settlement Fund and the costs associated with the Settlement Claims Administrator shall be included within the Final Settlement Amount.
 - C. **Responsibilities of Settlement Claims Administrator.** The Settlement Claims Administrator shall be responsible for: (i) printing and disseminating to the Settlement Class in hard copy by United States mail service, the Notice and Claim Forms; (ii) performing a skip trace and resending, within one (1) day of receipt, any Notice and Claim Form returned without a forwarding address, or resending to those with a new forwarding address; (iii) responding to inquiries from the Parties; (iv) monitoring and maintaining a telephone number with telephone answerers until the Final Effective Date or the termination of this Agreement,

whichever comes first; (v) promptly furnishing to counsel for the Parties copies of any requests for exclusion, objections or other written or electronic communications from each Class Member that the Settlement Claims Administrator receives; (vi) receiving, retaining and reviewing each Claim Form submitted by any Class Member; (vii) keeping track of requests for exclusion or objection, including maintaining the original envelope in which the request or objection was mailed; (viii) mailing Service Award and Settlement Checks in accordance with this Agreement and the Final Order; (ix) preparing, sending and/or wire-transferring Class Counsel's attorneys' fees, expenses, and costs; (x) paying all Employment Taxes, including issuing the W-2 and 1099 Forms for all amounts that are paid as Employment Taxes from the Final Settlement Amount; (xi) responding to inquiries of Class Members regarding procedures for filing objections, Opt-out Statements, and Claim Forms; (xii) referring to Class Counsel all inquiries by Class Members or Authorized Claimants regarding matters not within the Settlement Claim Administrator's duties specified herein; (xiii) responding to inquiries of counsel for the Parties relating to the Settlement Claims Administrator's duties specified herein; (xiv) promptly apprising counsel for the Parties of the activities of the Settlement Claims Administrator; (xv) maintaining adequate records of its activities, including the dates of the mailing of Notices and mailing and receipt of Claim Forms, returned mail and any and all other actual or attempted written or electronic communications with the Settlement Class; (xvi) confirming in writing to counsel for the Parties and the Court its completion of the administration of the settlement; (xvii) timely responding to communications from Class Counsel and Defendants' Counsel; (xviii) providing all information, documents and calculations necessary to confirm the Final Settlement Amount; and (xix) such other tasks as the Parties mutually agree.

In addition, no later than thirty (30) days prior to the Fairness Hearing, the Settlement Claims Administrator shall certify jointly to Class Counsel and to Defendants' Counsel (a) a list of all Class Members; (a) a list of Class Members who filed timely valid Claims Forms; (c) a list of all Class Members who filed timely objections; and, (d) a list of all Class Members who requested to opt-out of the settlement at any time during the opt-out period. Throughout the period of claims administration, the Administrator will provide reports to the Parties upon request by either Party regarding the status of the mailing of the Notices to the Class, the claims administration process, and distribution of the Settlement Checks or any other aspect of the claims administration process, and shall communicate all information to Class Counsel and to Defendants' Counsel.

- D. **Access to the Settlement Claims Administrator.** The Parties will have equal access to the Settlement Claims Administrator. Class Counsel and Defendants' Counsel agree to use their best efforts to cooperate with the Settlement Claims Administrator and provide reasonable assistance in administering the settlement.

2.4 Approval Motion.

- A. Within thirty (30) days following complete execution of this Agreement, Class Counsel shall file a Motion for Approval. Within fifteen (15) days following complete execution of this Agreement, to the extent not already provided, Class Counsel shall supply Defendants' Counsel with a draft of the Approval Motion and Defendants' Counsel will review and make any revisions to the Approval Motion within seven (7) days following receipt. Upon agreement by Class Counsel and Defense Counsel regarding the content of the Approval Motion, Class Counsel will file the Approval Motion with the Court. In connection with the Approval Motion, Class Counsel will submit to the Court: (1) the proposed Notice; (2) the proposed Claim Form; (3) the proposed Approval Order; (4) an executed version of this Agreement; and, (5) the necessary documents, memorandum, affidavits and exhibits for the purposes of certifying a Class for settlement purposes under CPLR §§ 901 and 902, and approving the settlement. The Approval Motion also will seek the setting of a date for individuals to submit Claim Forms, Opt-out Statements and/or object to this Agreement and for a Fairness Hearing, should the Court wish to schedule one.
- B. In the Approval Motion, Class Counsel shall inform the Court of the intended process to effectuate the settlement as contemplated by this Agreement, such that the Court may, among other things: (1) approve the settlement as fair, adequate, and reasonable; (2) incorporate the terms of the Release, as described herein; (3) dismiss the Action with prejudice; (4) award Costs and Fees to Class Counsel and any Service Awards to Named Plaintiffs; and (5) authorize distribution and payment to the Authorized Claimants.
- C. Class Counsel will file the Approval Motion as "unopposed." Defendants shall not oppose such application so long as it is consistent with the terms and conditions of this Agreement.
- D. If the Court denies the Approval Motion, unless the Parties agree to seek reconsideration of the ruling or attempt to renegotiate the settlement and seek Court approval of a renegotiated settlement, the Action will resume as if no settlement had been attempted. In that event, Defendants retain the right to contest whether the Action should be maintained as a class action and to contest the merits of the claims being asserted in the Action and no term of this Agreement shall be used or referenced in connection with the further prosecution and/or defense of the Action.

2.5 Notice and Claim Forms to Class Members.

- A. **Class List.** Within thirty (30) days following the Approval Order being signed by the Court, Defendants' Counsel shall provide Class Counsel and the Settlement Claims Administrator with the Class List. All information provided regarding the Class will be treated as confidential information by Class Counsel and the Settlement Claims Administrator. The Class List shall be used by the Claims Administrator solely for the purposes of effectuating the settlement, and may not be copied or disseminated for any other purpose. Class Counsel shall be

permitted to use the Class List solely for the purposes of verifying the accuracy of the settlement calculations and addressing inquiries from Class Members concerning settlement calculations and distributions, if any. Class Counsel shall not copy the Class List or use and/or disseminate the list or its information for any other purpose. In the event that the Agreement is terminated, then the Class List shall be returned to the Defendants' counsel.

- B. **Due Diligence.** In connection with the settlement discussions between the Parties, including the mediation conducted before Mediator Scheinman, Defendants' counsel provided Plaintiffs' counsel with significant documents and information relating to the defense of the claims, including but not limited to (i) summaries of documents, payroll information and testimony that the Defendants contend would establish the lack of factual and legal sufficiency to the claims asserted, as well as (ii) documents, payroll and other information that Defendants contend establish that the alleged damages of the Named Plaintiffs and Class Members is far below what is claimed. Plaintiffs' counsel has reviewed and verified the information that Defendants' counsel has provided.
- C. **Notice.** The Notice will inform the Settlement Class about this settlement, and will also advise them of their rights, including their ability to object to, opt-out of, or participate in the settlement, and to appear at the Fairness Hearing. The Notice will also request that the Settlement Class disclose whether they were recipients of Medicare benefits during the relevant period of time. Within twenty (20) days of the entry of the Approval Order, or as otherwise ordered by the Court, the Settlement Claims Administrator shall mail to each Class Member via First Class Mail the Court-approved Notice and Claim Form. Class Counsel may maintain a static website with a copy of the Notice and Claim Form.
- D. **Skip Trace and Remailing.** If a Claim Form mailed to a Class Member is returned as undeliverable, the Settlement Claims Administrator shall take all reasonable steps to obtain the correct address, including one skip trace, social security verification, and Accurint search, and shall re-mail the Claim Form to such address. To the extent that Class Counsel is able to obtain better addresses for any Class Member, it shall provide such updated or most recent addresses to the Settlement Claims Administrator for mailing purposes. The Settlement Claims Administrator shall also mail a Notice and Claim Form to any Class Member who requests them after the initial mailing of Notice and before the Bar Date. The Settlement Claims Administrator will notify Class Counsel and Defendants' Counsel of any Notices and Claim Forms returned as undeliverable after the first mailing, including those returned as undeliverable after any subsequent mailing. All costs of locating Class Members will be paid from the QSF.
- E. **Other Notice.** Other than the mailing procedure outlined herein, there shall be no other form of notice to Class Members. Class Counsel shall not directly and/or indirectly publicize the settlement nor directly and/or indirectly solicit or contact Class Members for the purpose of inducing or encouraging them to file claims; notwithstanding, nothing shall prohibit Class Counsel from consulting with

potential Class Members that may inquire as a result of the Notice or from communicating with presently known Class Members.

- F. **Bar Date.** To be deemed an Authorized Claimant, a Class Member must postmark, email or fax a signed Claim Form to the Settlement Claims Administrator by the Bar Date. The Bar Date shall be (i) sixty (60) days from the date of the initial mailing or as otherwise set by the Court, and (ii) an additional fifteen (15) days later for any Class Members who did not receive the Notice, or were unable to file a timely Claim Form, due to factors such as change of address, military service, hospitalization, or other extraordinary circumstances. If an envelope does not contain a postmark, it shall be deemed received on the date that the Settlement Claims Administrator stamps the envelope or Claim Form as “received.”

2.6 Opt-outs: Class Members who Opt-out of the Settlement.

- A. Class Members who elect to opt-out of the settlement as set forth in this Agreement must mail, via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Claims Administrator that states he or she is opting out of the settlement (“Opt-out Statement”). In order to be valid, the Opt-out Statement must include the name, address, and telephone number of the Class Member, and a statement indicating his or her intention to opt-out. To be effective, an Opt-out Statement must be postmarked by United States Postal Service on or before the Bar Date.
- B. The time period to opt-out of the settlement (“Opt-out Period”) shall be on or before the Bar Date.
- C. The Settlement Claims Administrator shall stamp the received date on the original of each Opt-out Statement and send copies of each Opt-out Statement to Class Counsel and Defendants’ Counsel not later than three (3) days after receipt. The Settlement Claims Administrator shall also file with the Clerk of the Court stamped copies of any Opt-out Statements prior to the Fairness Hearing. The Settlement Claims Administrator will, within twenty-four (24) hours of the end of the Opt-out Period, send a final list of all Opt-out Statements to Class Counsel and Defendants’ Counsel by both email and overnight delivery. The Settlement Claims Administrator shall retain the stamped originals of all Opt-out Statements and originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Claims Administrator is relieved of its duties and responsibilities under this Agreement.
- D. Any Class Member who does not timely submit an Opt-out Statement pursuant to this Agreement will be deemed to have accepted the settlement and the terms of this Agreement, will be bound by the Final Order, and will have released any Released Class Claims and dismissed with prejudice. Only those Class Members who timely complete and return a Claim Form postmarked or received by the Settlement Claims Administrator by the Bar Date will be deemed Authorized

Claimants. Defendants shall have no obligation to pay or fund any amounts allocated to Class Members who do not timely submit a Claim Form as set forth in this Agreement.

- E. For purposes of this Agreement, the Named Plaintiffs are deemed to be Authorized Class Claimants, and are not required to file a Claim Form.

2.7 Objectors: Authorized Claimants who Object to the Settlement.

- A. Class Members who wish to present objections to the proposed settlement at the Fairness Hearing must first do so in writing and validly file a Claim Form by the Bar Date. To be considered, such statement must be mailed to the Settlement Claims Administrator via First Class Mail, postage pre-paid, and postmarked by the United States Postal Service on or before the Bar Date. The statement must include all reasons for the objection, and any supporting documentation. The statement must also include the name, address, and telephone number of the Class Member making the objection. The Settlement Claims Administrator will stamp the date received on the original and send copies of each objection, supporting documents, as well as a copy of the Notice and Claim Form mailed to the Objector, to Class Counsel and Defendants' Counsel by email delivery no later than three (3) days after receipt of the objection. The Settlement Claims Administrator shall also file the date-stamped originals of all objections with the Court.
- B. Any Authorized Claimant who files objections to the settlement ("Objector") shall also have the right to appear at any Fairness Hearing scheduled by the Court, either in person or through counsel hired by the Objector. An Objector who wishes to appear at a potential Fairness Hearing must state his or her intention to do so in writing on his or her written objections. An Objector may withdraw his or her objections at any time. Any Class Member who has elected to opt-out may not submit objections to the settlement.

2.8 List and Calculations.

- A. No later than thirty (30) days following the Bar Date, the Settlement Claims Administrator shall certify jointly to Class Counsel and Defendants' Counsel: (a) a list of all Authorized Claimants, (b) a list of all Objectors, (c) a list of all Class Members who timely submitted an Opt-out Statement, (d) a list of all Class Members who disclosed that they were a Medicare recipient during the relevant time period and the amounts of any medical expenses and prescription drug expenses that was paid on behalf of each Class Member related to any injuries that are claimed to have been sustained (whether paid or unpaid), and (e) estimated calculations for payments to all Authorized Claimants, less any offsets to be repaid to Medicare pursuant to the Medicare Secondary Payor Act. Additionally, at such time the Settlement Claims Administrator shall also provide notice by e-mail to Class Counsel and Defendants' Counsel of the Final Settlement Amount, together with an Excel spreadsheet that designates each

Authorized Claimant, his/her allocated share, and the appropriate totals and calculations to confirm the Final Settlement Amount and the estimated Employment Taxes (“Notice of Final Settlement Amount”).

- B. Throughout the period of claims administration, the Settlement Claims Administrator shall provide reports to Class Counsel and Defendants’ Counsel upon their request regarding (i) the status of the mailing of the Notices and Claim Forms to Class Members, (ii) the status or progress of the claims administration process, (iii) anticipated or expected distribution of the Settlement Checks, and (iv) any other aspect of the claims administration process. Beginning the second Friday after Notice is mailed to Class Members, the Settlement Claims Administrator shall provide counsel for the Parties a weekly update on the number of Authorized Claimants, Objectors, and Opt-outs.

2.9 Non-Consummation of Agreement.

If this settlement is not consummated because of a ruling by the Court declining to enter a Approval Order in the form submitted by the Parties (including a reversal and/or modification on appeal of the Court’s Approval Order) then the Parties shall first endeavor to resolve the matter jointly and in good faith, including jointly or individually seeking reconsideration of the Court’s ruling if necessary, or involving the Mediator. To the extent such efforts fail, the Parties may continue to litigate the Action as though this Agreement had never been executed and the Settlement Class had never been certified, and nothing in this Agreement may be used as an admission or offered into evidence in any proceeding involving Defendants whatsoever. In that event, all documents and/or information exchanged following the execution of this Agreement shall be promptly returned to the producing party.

2.10 Termination of Agreement.

A. Grounds for Termination.

The Agreement may be terminated in accordance with the following provisions:

- (1) If the aggregate payments to be paid by Defendants into the QSF, including aggregate payments made to all Authorized Claimants participating in the proposed settlement plus service awards, settlement claims administrator fees, taxes, professional fees and costs (collectively “Claims, Fees and Costs”) exceeds two-thirds (2/3) of the Gross Settlement Fund (the “Termination Amount”) then the matter shall be referred to the Mediator to attempt to resolve the matter. In the event that the matter cannot be resolved by the Mediator, then Class Counsel may unilaterally agree to reduce pro-rata the amounts to be paid to Authorized Claimants and for Costs and Fees so that the Final Settlement Amount does not exceed the Termination Amount. To the extent that the matter cannot be resolved by the Mediator and Class Counsel does not agree to reduce pro-rata the amounts to be paid to Authorized Claims and for Costs

and Fees so that the Final Settlement Amount does not exceed the Termination Amount, then Defendants shall have a right to terminate this Agreement by giving Class Counsel written notice, sent via overnight carrier and e-mail, within ten (10) days following the Mediator declaring that the matter cannot be resolved.

- (2) If three percent (3%) or more of the Class Members elect to opt-out of the settlement as set forth in Section 2.6 of this Agreement.

B. Effect of Termination. Termination shall have the following effects:

- (1) In the event this Agreement is terminated by Defendants, then the Parties will continue with the litigation as of the date of this Agreement with all rights and defenses intact as if no agreement had occurred and no term of this Agreement shall be used or referenced in connection with the further prosecution and/or defense of the Action.
- (2) Defendants shall have no obligation to make any payments to Named Plaintiff, any Class Member, Authorized Claimant, or Class Counsel. However, the Parties shall be equally responsible to pay the costs, fees and expenses of the Settlement Claims Administrator incurred in connection with this Agreement, including the notice of termination to the Settlement Class.
- (3) The Parties shall advise the Court of the termination, and shall apply to the Court to have a single approved notice mailed to Class Members advising them of the termination. If approved by the Court, then the Settlement Claims Administrator shall provide a Court-approved notice to Class Members and any Authorized Claimants that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Authorized Claimants under the Agreement. Such notice shall be mailed by the Settlement Claims Administrator via First Class United States Mail.
- (4) If this settlement is not consummated for any reason, including: (1) a Termination under this Agreement; (2) a ruling by the Court declining to enter a Approval Order in the form submitted by the Parties (including a reversal and/or modification on appeal of the Court's Approval Order); or (3) for any other reason not presently contemplated, then the Parties shall first endeavor to resolve the matter jointly and in good faith, including jointly or individually seeking reconsideration of the Court's ruling if necessary or involving the Mediator. To the extent such efforts fail, the Parties may continue to litigate the Action as though this Agreement had never been executed and the Settlement Class had never been certified, and nothing in this Agreement may be used as an admission or offered into evidence in any proceeding involving Defendants whatsoever. In that event, all documents and/or information exchanged following the

execution of this Agreement shall be promptly returned to the producing party

3. SETTLEMENT TERMS

3.1 Amount. Defendants collectively and individually agree to pay Three Hundred Seventy Five Thousand Dollars (\$375,000.00) for allocation and calculation purposes (inclusive of all required Employment Taxes), to fully resolve and satisfy all amounts to be paid to all Authorized Claimants and any Court-approved Costs and Fees.

A. **Funding the QSF.** Defendants shall fund Twenty Five Hundred Dollars (\$2,500) to the QSF within thirty (30) days after the entry of the Approval Order. Defendants shall fund the remainder of the Final Settlement Amount within thirty days (30) after the Final Effective Date.

B. **Reserve Fund.** The Settlement Claims Administrator shall set aside Five Thousand Dollars (\$5,000.00) of the Final Settlement Amount to cover any errors, late claims, or omissions (e.g., individual Authorized Claimants who dispute the amounts allocated to them, or individuals who allege they should be part of the Class). Any Class Member or individual who wishes to challenge any error or omission shall provide a signed, sworn and notarized written statement to Class Counsel, the Settlement Claims Administrator, or Defendants' Counsel as to why such error, late claims, or omission should be corrected, along with supporting documents, if available. Any Party or Settlement Claims Administrator who receives such a statement must provide a copy to all Parties and the Settlement Claims Administrator within five (5) days by email. Defendants' Counsel shall notify any challenging individual, along with Class Counsel, within ten (10) days whether such error or omission will be corrected and paid from the Reserve Fund. If Defendants' Counsel fails to respond within ten (10) days of receiving a signed, sworn and notarized written statement by any challenging individual, such error or omission will be deemed an error and thereby corrected by the Settlement Claims Administrator in a reasonable amount of time. To the extent the Parties are unable to agree on an error, late claim, or omission, such error, late claim, or omission may be submitted to the Mediator who shall issue a binding decision on the issue. The Parties shall endeavor to resolve all errors and omissions within six (6) months from the mailing of the Settlement Checks. Any monies remaining in the Reserve Fund after the resolution of all errors and omissions nine (9) months after the mailing of the Settlement Checks shall revert to Defendants.

C. **Deduction of Payroll Taxes.**

All Employment Taxes and any MSP repayments will be paid out of the QSF by the Settlement Claims Administrator. Defendants will provide the Settlement Claims Administrator such information as is necessary for the Settlement Claims Administrator to make proper tax withholdings, issue and file tax-related forms, and comply with all tax reporting obligations.

The Settlement Claims Administrator shall calculate the appropriate and regular tax deductions from each Authorized Claimant's Individual Gross Amount (as calculated by Section 3.5B) to determine the Individual Net Amount. The Individual Net Amount will be the amount reflected on the Settlement Checks. Any reduction reflected in the difference between the Individual Gross Amount and Individual Net Amount will not affect the Final Settlement Amount or the Authorized Claimants' Share.

3.2 Payments from the QSF.

The Settlement Claims Administrator shall make the following payments from the QSF, once the QSF is funded as described in Section 3.1A:

- A. Within five (5) days of the QSF being funded, the Settlement Claims Administrator shall (i) mail all Settlement Checks to Authorized Claimants, (ii) mail any Service Award to Named Plaintiffs, (iii) mail or wire-transfer payment to Class Counsel in the amount of Court-approved attorneys' fees and costs, and (iv) pay all Employment Taxes to the appropriate government authorities.
- B. Any amounts representing uncashed Settlement Checks, Service Award, the Reserve Fund, or any other amount remaining in the QSF six (6) months after the mailing of the Settlement Checks shall revert to Defendants. Any forfeiture by the Named Plaintiffs or Authorized Claimants by reason of this provision shall not otherwise invalidate their release of Released Claims against the Defendants and Related Persons pursuant to this Agreement.

3.3 Amounts Payable as Attorneys' Fees, Costs, and Expenses.

- A. At the Fairness Hearing, and in connection with the Application for Final Approval, Class Counsel will petition the Court for an award of no more than One Hundred Twenty Five Thousand Dollars (\$125,000.00), which represents $\frac{1}{3}$ of the Gross Settlement Fund, as and for attorneys' fees, plus up to \$7,500 for actual costs and expenses incurred in connection with Class Counsel's prosecution of the Action and its resolution (including the costs of mediation), but not the cost of the Settlement Claims Administrator. Defendants shall not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B. The substance of Class Counsel's application for attorneys' fees, expenses and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The outcome of any proceeding related to Class Counsel's application for attorneys' fees, expenses and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval.
- C. Defendants shall fund the Court-approved Class Counsel's costs, fees and expenses as part of the QSF in the manner described in Section 3.1A.

3.4 Service Award to Named Plaintiffs.

- A. In return for services rendered to the Settlement Class, at the Fairness Hearing Named Plaintiffs may apply to the Court to receive a Service Award of no more than Seven Thousand Five Hundred Dollars (\$7,500.00) per Named Plaintiff.
- B. The application for a Service Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The outcome of the Court's ruling on the application for a Service Award will not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval.
- C. Defendants shall fund the Court-approved Service Award as part of the QSF in the manner described in Section 3.1A.

3.5 Allocation to Class Members.

- A. **Class "A" Members.** For purposes of calculating the share of the Gross Settlement Fund allocable to the 58 Class Members on Exhibit "A" that did not submit a claim to the Settlement Claims Administrator in connection with the settlement of the Membrives Action (the "Class A Gross Claimant Fund"), the amount shall be One Hundred Thirty One Thousand Dollars (\$131,022.00)

Each Authorized Claimant will be entitled to a flat payment from the Class "A" Gross Claimant Fund of \$2,259.00 as his/her Individual Gross Amount, before taxes.

- B. **Class "B" Members.**
 - (1) **Gross Claimant Fund.** For purposes of calculating the share of the Gross Settlement Fund allocable to the 36 Class Members on Exhibit "A" that submitted a claim to the Settlement Claims Administrator in connection with the settlement of the Membrives Action (the "Class "B" Gross Claimant Fund"), the amount shall be equal to the Gross Settlement Fund minus (i) Court-approved Attorneys' Fees, Costs, and Expenses, (ii) Court-approved Service Awards, (iii) the cost associated with the Claims Administrator, (iv) the Reserve Fund, and (v) the Class A Gross Claimant Fund.
 - (2) **Formula.** For Class B Members, each Class Member's share of the Class B Gross Claimant Fund will be determined by taking 37.2% of the average of each Class Member's earnings from Defendants for 2017/2018, subject to the following modification: (i) if the Class B Member's employment with the Defendants separated prior to June 30, 2018, then his/her share shall be reduced by fifty (50%), and if the Class B Member is still employed by the Defendants, then his/her share shall be reduced by seventy five (75%) percent

- C. **Authorized Claimants' Share.** The total owed to all Authorized Claimants as a result of the application of the formulas set forth in Section 3.5A and 3.5B shall be calculated to be and represent the Authorized Claimants' Share.
- D. With respect to any Class B Member who received Medicare during the relevant time period, their share of the Authorized Claimants' Share shall be reduced by any required MSP payments.
- E. **Employee-Side Taxes.** The Employee-Side Taxes shall be deducted from each Authorized Claimant's Individual Gross Amount to arrive at their Individual Net Payment Amount. The Claims Administrator shall handle all reporting and processing of such amounts.

3.6 Tax Characterization. Settlement Checks to Authorized Claimants will be deemed W-2 wage income. All Costs, Fees and the Service Award to Named Plaintiffs will be considered 1099 non-wage income. All wage payments to Authorized Claimants shall be subject to applicable payroll and withholding taxes. All Costs and Fees shall be paid from the QSF.

3.7 Release of Claims.

- A. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, each individual Class Member who does not timely opt-out pursuant to this Agreement forever and fully releases and discharges Defendants and Defendants' managers, members, directors, shareholders, officers, employees, agents, parents, subsidiaries, affiliated companies, insurers, heirs, successors and/or assigns, and all persons, natural or corporate, in privity with the Defendants (collectively, "Released Parties") from all Released Class Claims.
- B. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, each individual Authorized Claimant forever and fully releases and discharges Released Parties from all Released Class Claims.
- C. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, Named Plaintiffs forever and fully release and discharge Released Parties from all Released Class Claims as well as any other claim of any kind under federal, state, or local law/regulation or common law based on events that took place from the beginning of time through execution of this Agreement.
- D. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, Defendants shall be deemed to have and shall fully, finally, and forever released, relinquished, and discharged Named Plaintiffs, Class Members, Authorized Claimants, and Class Counsel from all claims arising out of, relating to, or in connection with the institution, prosecution,

assertion, settlement, or resolution of the Action and/or the Released Class Claims.

- E. Except as provided in this Agreement, upon payment of all Costs and Fees as approved by the Court, Class Counsel, on behalf of the Authorized Claimants and Class Members, irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Released Parties for attorneys' fees, expenses, disbursements and all other costs and fees associated with Class Counsel's representation of the Class. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final and complete payment of all attorneys' fees, expenses, disbursements and all other costs and fees associated with Class Counsel's representation in the Action.
- F. Class Counsel represents that it is not aware of any actual or potential claims by Named Plaintiffs or Class Members against Released Parties for violation of any federal, state or local law/regulation or the common law other than the claims that have been asserted in this Action.

3.8 Non-Admission of Liability. By entering this Agreement, Defendants in no way admit any violation of law or any liability whatsoever to Named Plaintiffs and/or the Class Members, individually or collectively, all such liability being expressly denied by Defendants. Rather, Defendants have elected to enter into this Agreement to avoid further protracted litigation and to fully and finally resolve and settle all disputes with Named Plaintiffs and Class Members. Settlement of the Action, negotiation and execution of this Agreement, and all acts performed and documents executed pursuant to or in furtherance of this Agreement or the settlement: (1) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in any and all complaints or other papers filed by Named Plaintiffs in the Action; and (2) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendants in any civil, criminal, administrative, or arbitral proceeding. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

3.9 Confidentiality

- A. Neither the Parties nor their counsel shall make any statement to the media relative to this Settlement. Class Counsel has agreed to not use the Action or the Mailing List as marketing tools or for promotional purposes in any manner. Class Counsel agrees to remove all reference to the Action from their website and will not reference the Action or the Settlement via social media.
- B. The Named Plaintiffs and Defendants shall keep the terms, existence and contents of this Agreement (including all communications and correspondence involving its negotiation and preparation) confidential, subject to the terms of this Section.

Nothing contained in this Section shall prohibit any disclosure by any of the Parties to their respective attorneys, accountants, advisors, family members or other employees and/or agents as may be required (i) by law for the lawful operation of their businesses, (ii) to fulfill the intent contemplated by this Agreement, and (iii) per applicable regulations or regulatory authorities. All financial terms embodied within the Stipulation and filed with the Court shall be redacted to preserve the Confidentiality of this Agreement.

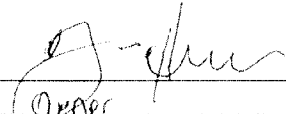
4. INTERPRETATION AND ENFORCEMENT

- 4.1 Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 4.2 No Assignment.** Class Counsel and Named Plaintiffs, on behalf of the individual Class Members, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action, or any related action.
- 4.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 4.4 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Named Plaintiffs and all Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns. Notwithstanding the passage of any legislation, bill, regulation, or other change in the law that may materially affect the rights of Named Plaintiffs and all Class Members in the Action, this Agreement is binding.
- 4.5 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 4.6 Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 4.7 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles.

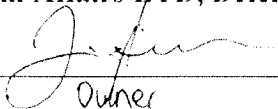
- 4.8 Continuing Jurisdiction.** With the exception of those matters that are to be referred to the Mediator for a final and binding determination, the Parties shall request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Parties may not unilaterally petition the Court to modify this Agreement or to increase the Defendants' payment obligations, except to the extent provided in this Agreement.
- 4.9 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 4.10 When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 4.11 Facsimile and Email Signatures.** Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile or email to counsel for the other party. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.
- 4.12 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 4.13 Consultation and Authority.** Class Counsel for Named Plaintiffs warrants and represents that they have consulted with Named Plaintiffs and have full authority to enter into this Agreement on behalf of Named Plaintiff and the Settlement Class.
- 4.14 Jurisdiction of Mediator.** Any disputes in connection with this Agreement including the notice and claim process, and efforts to obtain a Final Order, Final Judgment and dismissal with prejudice shall be submitted to review by the Mediator whose decision shall be binding and not subject to appeal.

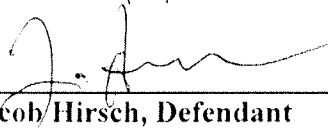
WE AGREE TO THESE TERMS,

**Sterling Caterers, Inc. d/b/a Arteres Avrohom,
Defendant**

By: 
Title: Owner
Print: Jacob Hirsch
Dated: 3/16/20

Platinum Affairs LTD, Defendant

By: 
Title: Owner
Print: Jacob Hirsch
Dated: 3/16/20


Jacob Hirsch, Defendant

Dated: 3/16/20

Chassity Gonzalez, Named Plaintiff


Dated: _____

Justine Gonzalez, Named Plaintiff

Dated: _____

Approved as to Form:

Rivkin Radler LLP

By: 
Barry I. Levy, Esq.
Dated: 3/17/20

Leeds Brown Law, P.C.

By: _____
Brett R. Cohen, Esq.
Dated: _____

**Sterling Caterers, Inc. d/b/a Arteres Avrohom,
Defendant**

By: _____
Title: _____
Print: _____
Dated: _____

Platinum Affairs LTD, Defendant

By: _____
Title: _____
Print: _____
Dated: _____

Jacob Hirsch, Defendant

Dated: _____


Chassity Gonzalez, Named Plaintiff

Dated: Feb. 24 2020


Justine Gonzalez, Named Plaintiff

Dated: Feb. 24, 2020

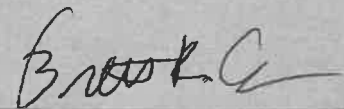
Approved as to Form:

Rivkin Radler LLP

By: _____
Barry I. Levy, Esq.

Dated: _____

Leeds Brown Law, P.C.

By: 
Brett R. Cohen, Esq.

Dated: 2/24/2020