

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into as of the last date of any signature below (“Execution Date”) by and among the Parties:

- (a) Plaintiffs Kevin Mehrens and Chris Roehm (“Representative Plaintiffs”), individually and as the representative of the proposed Settlement Class, and
- (b) Defendant Concept Entertainment-Six, LLC d/b/a Grand Central Restaurant and Bowling Lounge (“Concept Entertainment” or “Defendant”).

The foregoing Representative Plaintiffs and Defendant are each individually a “Party” and collectively “the Parties.”

I. RECITALS

1.01 Representative Plaintiffs Kevin Mehrens and Chris Roehm filed a lawsuit against Defendant under the caption *Kevin Mehrens and Chris Roehm v. Concept Entertainment-Six, LLC d/b/a Grand Central Restaurant and Bowling Lounge*, in the Multnomah County Circuit Court for the State of Oregon (“Court”) as Case No. 17CV49816 (the “Action”). In the Action, Representative Plaintiffs claim that Defendant violated ORS 646.608 (Unfair Trade Practices Act) and was unjustly enriched, by overcharging customers by failing to properly notify customers of a 2% service charge.

1.02 Defendant denies the material allegations in the Action and denies all liability with respect to the facts and claims alleged in the Action. Nevertheless, without admitting or conceding any liability whatsoever, and while continuing to deny that the claims asserted in the Action would be appropriate for class treatment if prosecuted at trial, Defendant now desires to settle the Action on the terms and conditions set forth in this Agreement to avoid the burden, expense, and uncertainty of continuing litigation, and to put to rest all claims that were, or could have been, brought in the Action or in similar litigation based on the facts alleged in the Action.

1.03 On March 14, 2018, the Parties participated in a mediation session presided over by neutral Susan Hammer. Each Party submitted mediation statements to Ms. Hammer. Only as a result of a full day of mediation, and over the course of several additional days, with the assistance of Ms. Hammer and as a result of arm’s-length negotiations, the Parties reached the material terms described in this Agreement.

1.04 Class Counsel, as defined below, have analyzed and evaluated the merits of the Parties’ contentions, the risk that Defendant would not be able to ultimately satisfy a judgment, the lack of any insurance coverage, the risks that the Court might not certify a class, and the impact of this Agreement on the members of the Settlement Class, as defined below. Based on that analysis and evaluation, in reliance on these representations and supporting information, and recognizing the risks of continued litigation and the likelihood that the Action, if not settled now, may be protracted and will further delay any relief to the proposed class, Representative Plaintiffs and Class Counsel, as defined below, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action on the terms described herein is in the best interests of the proposed Settlement Class.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, the Parties, for themselves and through their undersigned counsel, agree to the following settlement, subject to Court approval, under the following terms and conditions:

II. DEFINITIONS

In addition to the terms previously defined and defined parenthetically elsewhere in this Agreement, the following definitions apply to this Agreement.

2.01 “Claim Form” means a form that is substantially in the form set forth in the attached Exhibit E. The requirements for a Settlement Class Member to submit a timely and valid Claim Form eligible for a Claim Payment are detailed in Paragraph 5.03 below.

2.02 “Claim Payment” means the payment of up to a maximum of \$40 that an Eligible Claimant can receive in the proposed settlement of the Action. The provisions addressing the specific amount of Claim Payment that each Eligible Claimant will receive are detailed in Paragraphs 3.01 and 3.03 below.

2.03 “Class Counsel” means Michael Fuller of OlsenDaines and Kelly Jones of The Law Office of Kelly Jones.

2.04 “Class List” means the list of persons whom Defendant has identified as potentially meeting the definition of the Settlement Class in Paragraph 2.14 below. The Class List will include the names that can be identified from receipts during the period of July 1, 2016 through November 22, 2017. The Settlement Administrator will provide reverse look-up information to identify the best possible address for each of the identified names for the Settlement Class.

2.05 “Class Notice” or “Notice” means the notice to be sent to the Settlement Class of the class action status and proposed settlement of the Action. The Class Notice will include a Settlement Hearing date set by the Court to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment. The Class Notice will be in substantially the forms attached as Exhibits B and C.

2.06 “Eligible Claimant” means a Settlement Class Member who complies fully with the Claim Form submission requirements set forth in Paragraph 5.03 below, including the requirements of timely and complete submission, and whose claim is not rejected by the Settlement Administrator or Defendant, as set forth in Paragraphs 5.04 and 5.05 below.

2.07 “Final Approval” means that all of the following have occurred:

- (a) The Court has entered the Settlement Order and Final Judgment;
- (b) The Court has made its final award of attorneys’ fees, costs, and Service Award; and
- (c) Thirty-one (31) calendar days have passed after entry of the Settlement Order and Final Judgment by the Court without any appeals or requests for review of the Court’s

Settlement Order and Final Judgment being filed, or, if appeals or requests for review have been filed, the time has passed for seeking further review after orders on appeal affirming the Settlement Order and Final Judgment, or review has been denied after exhaustion of all appellate remedies.

2.08 “Preliminary Approval” means the Court has entered an order (“Preliminary Approval Order”) substantially in the form of Exhibit A to this Agreement, preliminarily approving the terms and conditions of this Agreement, including the manner of providing Class Notice to the Settlement Class.

2.09 “Released Claims” means any and all claims, rights (including rights to restitution or reimbursement), demands, actions, causes of action, suits, liens, damages, attorneys’ fees, obligations, contracts, liabilities, agreements, costs, expenses or losses of any nature, whether known or unknown, direct or indirect, matured or unmatured, contingent or absolute, existing or potential, suspected or unsuspected, equitable or legal, and whether under federal statutory law, federal common law or federal regulation, or the statutes, constitutions, regulations, ordinances, common law, or any other law of any and all states or their subdivisions, parishes or municipalities, that arise out of or relate in any way to communications (including, but not limited to, email and phone communications) between Defendant and Settlement Class Members, regarding alleged improper charging of a two percent (2%) service charge, that have been, or could have been, brought in the Action, as well as any claims arising out of the same nucleus of operative facts as any of the claims asserted in the Action, but does not include any such claims that arose after November 22, 2017.

2.10 “Released Parties” means Concept Entertainment-Six, LLC d/b/a Grand Central Restaurant and Bowling Lounge, along with each and every one of its respective affiliates, parents, direct and indirect subsidiaries, agents, insurers, and any company or companies under common control with Defendant, and each of their respective predecessors, successors, past and present officers, directors, managers, employees, agents, contractors, servants, accountants, attorneys, advisors, shareholders, members, insurers, representatives, partners, vendors, issuers, and assigns, or anyone acting on its behalf.

2.11 “Service Award” means the payment to Representative Plaintiffs for their time and effort in connection with the Action, including reviewing the complaint and amended complaint, responding to various requests for documents and information, reviewing discovery documents, attending mediation, and investigating claims on behalf of the Settlement Class over the course of six months, in an amount approved by the Court of One Thousand Five Hundred Dollars (\$1,500.00) for each Representative Plaintiff for total Service Awards of Three Thousand Dollars (\$3,000.00).

2.12 “Settlement Administration” means the process under the Court’s supervision, that includes, but is not limited to, the manner in which the Class Notice, claims process, and the making of the calculations, payments (including Claim Payments), and distributions required under this Agreement, are effectuated. Defendant will pay for the cost of Settlement Administration as described in Paragraph 3.05 below.

2.13 “Settlement Administrator” means _____ [to be provided], which will perform Settlement Administration in this case. If the Settlement Administrator identified in this Paragraph becomes unable or unwilling to fulfill its duties under this Agreement to the Parties’ satisfaction, Defendant shall select a replacement subject to the approval of Class Counsel, which shall not be unreasonably withheld. Class Counsel will provide to the Settlement Administrator the names and contact information for potential members of the Settlement Class in their possession so the Settlement Administrator can provide the potential members a Claim Form.

2.14 Except as otherwise provided in this Paragraph, “Settlement Class” means all Oregon consumers who during the period of July 1, 2016 through November 22, 2017, were charged a service charge at Grand Central Restaurant and Bowling Lounge.

The Settlement Class expressly does not include any person who validly requests exclusion from the Settlement Class. The Settlement Class also does not include Defendant, any entity that has a controlling interest in Defendant, and Defendant’s current or former directors, officers, counsel, and their immediate families.

2.15 “Settlement Class Members” means persons meeting the definition of the Settlement Class.

2.16 “Settlement Fund” means the total amount of funds Defendant will provide for Claim Payments to Eligible Claimants who submit an approved Claim Form. Defendant is not required to relinquish control of any funds until payments are due under the terms of this Agreement. Defendant shall not be responsible for any payments or obligations other than those specified in this Agreement. The amount and distribution of the Settlement Fund is described in Paragraphs 3.01 to 3.04 and 5.06 below.

2.17 “Settlement Hearing” means the hearing to be set by the Court to consider objection, if any, to the settlement and to enter the Settlement Order and Final Judgment.

2.18 “Settlement Order and Final Judgment” means an order and judgment substantially in the form of Exhibit F to this Agreement, entered by the Court approving this Agreement as final and binding on the Parties and Settlement Class Members.

2.19 The plural of any defined term includes the singular and the singular of any defined term includes the plural, as the case may be.

III. GENERAL TERMS OF SETTLEMENT

3.01 **Settlement Fund.** Defendant will fund a Settlement Fund for the Settlement Administrator to pay Claim Payments to Eligible Claimants. The amount Defendant will provide for the Settlement Fund will be a total of \$40,000, with Claim Payments payable up to a maximum of \$40 to each Eligible Claimant who files a timely and valid claim.

3.02 **Payments to Eligible Claimants.** The Settlement Administrator will pay Claim Payments to Eligible Claimants on or before the dates they are due as detailed in this Agreement.

3.03 **Pro Rata Claim Payments.** If the Settlement Fund is insufficient to pay each Eligible Claimant the maximum \$40 Claim Payment without exceeding the maximum \$40,000 Settlement Fund allowance, then each Eligible Claimant will receive a pro rata Claim Payment based on the number of Eligible Claimants who submit timely and valid claims and the maximum available \$40,000 from the Settlement Fund.

3.04 **Cy Pres Donation.** If the amount of total Claim Payments fails to exceed the \$40,000 Settlement Fund allowance, Defendant agrees to donate the remainder to a common fund/cy pres per ORCP 32 O.

3.05 **Settlement Administration.** Settlement Administration shall occur under the Court's supervision. The costs of Settlement Administration and the Settlement Administrator shall be paid by Defendant, including those costs to send Class Notice; send notices required under the Class Action Fairness Act; receive and determine validity of claims; and receive and distribute funds for payment of attorneys' fees and costs, the Representative Plaintiffs' Service Award, and Claim Payments in accordance with the terms of this Agreement. The Settlement Administrator will send Class Notice and notices to the appropriate state and federal officials pursuant to 28 U.S.C. § 1715, oversee claims processing, and make the calculations, payments, and distributions required under this Agreement. After the Court enters an order preliminarily approving this Agreement, Defendant will advance the necessary funds to cover the costs estimated by the Settlement Administrator for sending Class Notice and other administration costs from Preliminary Approval through Final Approval.

3.06 **Fee Application for, and Payment of, Attorneys' Fees and Costs, and Service Award.** The Parties did not discuss the payment of attorneys' fees or costs until after the substantive elements of the Settlement Agreement had been agreed upon. No later than fourteen (14) calendar days after the Settlement Administrator sends Class Notice, as provided in Paragraph 4.03.2, Class Counsel will apply to the Court for an award of attorneys' fees and costs, and for the Service Awards ("Fee Application"). Defendant agrees not to oppose Representative Plaintiffs' request for: (i) a Service Award for the Representative Plaintiffs of \$1,500 each or \$3,000 total (ii) out-of-pocket litigation costs not to exceed \$7,600 and attorneys' fees not to exceed \$75,000. Class Counsel has stated that they are agreeing to discount their fees from their customary rate so their application will not seek more than \$75,000 in fees total. If Final Approval occurs, Defendant shall pay to Class Counsel the total amount of attorneys' fees and costs of Class Counsel approved by the Court, in full and complete compensation for attorneys' fees and costs, and the Service Award, in six (6) equal installments beginning on the 25th day of the month that arrives thirty (30) days after all conditions of Final Approval (including expiration of the appeals period) described in Paragraph 2.07 above are satisfied and continuing on the 25th of each month until the fees are paid in full. In exchange for Class Counsel's agreement to discount attorneys' fees, from what they state is their customary rate, to facilitate settlement, Defendant agrees to host a total of three (3) bowling parties (free bowling), one (1) each for up to 72 students from Rosemary Anderson High School, Carpe Diem Education, and Fir Ridge Campus, at a date and time of Defendant's choosing on or before January 1, 2019.

IV. SETTLEMENT APPROVAL AND CLASS NOTICE

4.01 **Preliminary Approval.** Within thirty (30) calendar days of the Execution Date of this Agreement, the Representative Plaintiffs will move for a Preliminary Approval Order in the form of Exhibit A, which, among other things, provisionally certifies the Settlement Class for settlement purposes only; appoints Representative Plaintiffs as the representatives of the Settlement Class; appoints Class Counsel as counsel for the Settlement Class; grants the Court's Preliminary Approval of this Agreement; approves the forms of Class Notice, which will be substantially in the forms of Exhibits B and C; sets dates for Settlement Class Members to submit Claim Forms, exclusion requests, and objections; and sets a Settlement Hearing date to consider objections, if any, to the settlement and to enter the Settlement Order and Final Judgment.

4.02 **Limited Effect of Settlement Class.** The certification of the Settlement Class shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification in Exhibit A shall be vacated by its terms, and the Action shall revert to the status that existed before execution of this Agreement. Thereafter, Representative Plaintiffs shall be free to pursue any claims available to them, and Defendant shall be free to assert any defenses available to it, including but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims and defenses.

4.03 **Class Notice.** The Parties will request that the Preliminary Approval Order direct that, within forty-five (45) calendar days of entry of the Preliminary Approval Order, the Settlement Administrator shall send Class Notice of the provisional class certification and proposed settlement to all Settlement Class Members, as set forth in Paragraphs 4.03.2 and 4.03.3 below, along with a Claim Form, as set forth below.

4.03.1 **Class List.** Within twenty (20) calendar days following entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with a Class List containing names for individuals Defendant has identified as potentially being included in the Settlement Class as defined in Paragraph 2.14 above. Settlement Class Members who cannot be identified by name will be notified by publication as specified in Paragraph 4.03.3 below.

4.03.2 **Postcard or Envelope Notice.** Within forty-five (45) calendar days following entry of the Preliminary Approval Order, the Settlement Administrator will send a fold-over Postcard Notice or Enveloped Notice (to be determined after consultation with Settlement Administrator and Defendant) substantially in the form attached hereto as Exhibit C, with a claim form, substantially in the form attached hereto as Exhibit E, by U.S. Mail to any Settlement Class Member for whom an address was identified.

4.03.3 **Publication Notice.** *The Oregonian* print edition and www.OregonLive.com have already published notice of this settlement without the parties' involvement. Within forty-five (45) calendar days following entry of the Preliminary Approval Order, the Settlement Administrator will cause to run publication notice substantially in the form of Exhibit B in *The Oregonian* on two (2) separate weekdays.

4.03.4 **Long-Form Notice.** A Long-Form Class Notice substantially in the form attached hereto as Exhibit D will be available to Settlement Class Members who request further information about the settlement from the Settlement Administrator. The Settlement Class Members can request further information by contacting the Settlement Administrator by phone, email, or U.S. Mail.

4.04 **Submission of Exclusion Requests.** Representative Plaintiffs will request that the Preliminary Approval Order direct that Settlement Class Members be allowed forty- five (45) calendar days from the date that Postcard or Envelope Class Notice is sent to request exclusion from the Settlement Class or to submit objections to the proposed settlement. The Class Notice described in Paragraph 4.03 above (both the Postcard or Envelope Notice and Publication Notice) shall direct that exclusion requests, if any, be mailed to the Settlement Administrator, which will provide periodic updates on exclusion requests to Defendant’s counsel, Davis Wright Tremaine (“DWT”), and Class Counsel. A potential Settlement Class Member who requests to be excluded must submit the request in writing, sent by U.S. Mail, with language stating the Settlement Class Member “want[s] to opt out of the Concept Entertainment or Grand Central Settlement.” The potential Settlement Class Member requesting exclusion must also provide his or her name, address, telephone number, and signature for the request to be considered valid. No request for exclusion may be submitted with the Settlement Administrator by phone, fax, or email. As a term of this Agreement, Class Counsel may not represent individuals, objectors, or opt-outs in this matter or in any way related to the Released Claims.

4.05 **Submission of Objections.** The Class Notice described in Paragraph 4.03 above shall direct that objections, if any, be mailed to Class Counsel, who shall file copies with the Court via electronic filing. Any Settlement Class Member who submits objections must do so in a writing, sent by U.S. Mail to Class Counsel, that includes the objecting Settlement Class Member’s name, address, telephone number, signature, a statement that the Settlement Class Member is a member of the class, and the reasons why the Settlement Class Member objects to the settlement. Any objections must be postmarked no later than forty-five (45) calendar days from the date that email or postcard Class Notice is sent. No objections may be submitted to Class Counsel by phone, fax, or email. Any re-sending of Class Notice shall not extend the time for a Settlement Class Member to request exclusion or submit objections.

4.06 **Termination Based on Exclusion Requests.** Defendant, in its sole and absolute discretion, may elect to terminate this Agreement if exclusion requests as provided for in the Preliminary Approval Order and Paragraph 4.04 above exceed a number agreed-upon by the Parties. Defendant may terminate under this Paragraph by providing written notice of termination to Class Counsel within thirty (30) calendar days of the end of the deadline to request exclusion set by the Court. Defendant has documented this termination option in a companion agreement between the Parties that will not be filed with the Court unless the Court so orders and, even then, only after the exclusion deadline has expired.

4.07 **Entry of Final Judgment.** Representative Plaintiffs will request that the Court (a) grant Final Approval and (b) enter judgment in accordance with this Agreement, in the form of Exhibit E, approving the Agreement as fair, reasonable, and adequate, and binding on all Settlement Class Members who have not excluded themselves, ordering that the Claim Payments be paid to Eligible Claimants in accordance with the terms of this Agreement, ordering that

attorneys' fees and costs, and the Service Award, be paid in the amounts approved by the Court in accordance with the terms of this Agreement, approving the form and manner of sending Class Notice as set forth in this Agreement, dismissing the Action with prejudice, and barring Settlement Class Members from bringing claims within the scope of the Released Claims.

4.08 **Reporting.** Within ninety (90) calendar days of completing the distribution of all payments pursuant to Section V below, Defendant will provide the Court a report verifying its compliance with this Agreement to the date of the report.

V. DISTRIBUTION OF PAYMENTS

5.01 **Responsibility for Distributions.** The Settlement Administrator will be responsible for making all distributions required under this Agreement from funds it receives from Defendant, which it will hold in trust and distribute only as specified in this Agreement. The Settlement Administrator will have authority to make the computations necessary to determine the Claim Payment for each Eligible Claimant, as well as the authority to make all decisions reasonably necessary for the orderly implementation and administration of this Agreement and the distribution of all payments prescribed in this Agreement. The Settlement Administrator shall have no liability for any computation or Settlement Administration decision made in good faith and not inconsistent with the express terms of this Agreement.

5.02 **Distribution of Attorneys' Fees and Costs, and Service Awards.** Attorneys' fees and costs, and the Service Awards, shall be distributed in the manner and time as set forth in Paragraph 3.06 above, in an amount approved by the Court by wire transfer to the attorney trust account of OlsenDaines, to be held in trust for distribution of the Service Awards, attorneys' fees, and cost payments. Defendant and the Settlement Administrator shall have no responsibility or liability for any failure of OlsenDaines to deliver any share of fees or costs, or the Service Award, to Kelly Jones, or any counsel not included in the definition of Class Counsel, but claiming some right to fees, costs, or other compensation as a result of resolution of the Action, or any payment to the Representative Plaintiffs. Defendant's obligations with respect to any fees, costs, expenses, or payments to any of Class Counsel (or to any counsel not included in the definition of Class Counsel but claiming some right to fees as a result of resolution of the Action) or to the Representative Plaintiffs shall be fully and forever discharged upon its payment by wire transfer to the attorney trust account of OlsenDaines, pursuant to this Paragraph and Paragraph 3.06 above. Other than Defendant's obligation to cause payment of the attorneys' fees and costs, and the Service Awards, in an amount approved by the Court, Defendant shall have no further obligations to Class Counsel, or to any other counsel not included in the definition of Class Counsel but claiming some right to attorneys' fees, costs, or other compensation, or to the Representative Plaintiffs.

5.03 **Submission of Claims and Eligibility for Distribution.** To be eligible for any Claim Payment pursuant to this Agreement, Settlement Class Members must submit a valid and timely Claim Form to the Settlement Administrator within sixty (60) calendar days after the Settlement Administrator sends Class Notice as provided in Paragraph 4.03.2 and 4.03.3 above. A Settlement Class Member may submit his or her Claim Form to the Settlement Administrator by email or U.S. Mail. A Claim Form must satisfy each of the following conditions to be considered valid and timely submitted:

(a) Provide all of the information requested on the Claim Form and a signature of the applicable Settlement Class Member under penalty of perjury certifying that (i) the Settlement Class Member paid a service charge at the Grand Central Restaurant and Bowling Lounge; (ii) (a) if paid with a credit card, provide the last four (4) digits of the credit card used to make the purchase; or (b) if paid with cash, identify what was purchased and on what date the purchase was made (iii) received the above-described charge after July 1, 2016; (iv) they did not know about the 2% service charge prior to ordering and (v) all of the information provided by the Settlement Class Member on the Claim Form is true and correct;

(b) Be postmarked and sent by U.S. Mail to the Settlement Administrator's address provided on the Claim Form, or time-stamped and sent by email to the Settlement Administrator's email address provided on the Claim Form, no later than sixty (60) calendar days after the Settlement Administrator sends Class Notice as set forth in Paragraph 4.03.2 or 4.03.3 above; and

(c) Provide the Settlement Class Member's mailing address to which the Settlement Administrator would mail the Claim Payment, if the Settlement Class Member qualifies as an Eligible Claimant.

5.04 Determination of Claims. The Settlement Administrator shall reject any Claim Form that is not valid, as described in Paragraph 5.03 above. If a Settlement Class Member's Claim Form is properly completed (including an affirmation under penalty of perjury that the Settlement Class Member satisfies the preconditions to payment), signed, and submitted within the specified time, and Defendant does not direct the Settlement Administrator to deny the claim based on alleged falsity (or Defendant's direction is reversed, as set forth in Paragraph 5.05 below), that Settlement Class Member will be deemed an "Eligible Claimant" entitled to the Claim Payment.

5.05 Notification to Counsel. No later than thirty (30) calendar days after all conditions of Final Approval have been met, the Settlement Administrator shall provide DWT and Class Counsel with (i) the names and addresses of Eligible Claimants whose claims have been approved, and the Claim Payment payable to each Eligible Claimant, and (ii) the names and addresses of claimants deemed not eligible and a brief statement of the reason(s) why the claim has been disallowed. The Settlement Administrator may provide this information in such form or media as Defendant and Class Counsel reasonably agree, subject to approval by the Settlement Administrator. Defendant shall have the right (but not the obligation) to verify the truthfulness of the representations on any Claim Form and the right (but not the obligation) to reject any Claim Form on which a material misrepresentation appears. This expressly includes the right for Defendant to review whether a Settlement Class Member satisfies the qualifications for the Settlement Class specified in Paragraph 2.14 above. Representative Plaintiffs shall have the right (but not the obligation) to challenge any rejection of a Settlement Class Member's claim by Defendant. The Parties will meet and confer about any such objections and agree to submit any unresolved disputes to the Court for resolution.

5.06 Manner of Distribution of Claim Payments. Defendant shall deliver to the Settlement Administrator the amounts necessary to fund the Settlement Fund for Claim Payments to Eligible Claimants within thirty (30) days after the Settlement Administrator

provides DWT and Class Counsel with the information regarding Eligible Claimants and Claim Payments included in Paragraph 5.05 above. The Settlement Administrator shall make Claim Payments from the Settlement Fund to Eligible Claimants by check and promptly send all Claim Payments to Eligible Claimants by U.S. Mail. The Claim Payment shall be mailed by the Settlement Administrator to the attention of the Eligible Claimant at the mailing address the Eligible Claimant provided in submitting his or her Claim Form. Checks issued to make Claim Payments shall remain valid for one hundred eighty (180) calendar days after issuance and shall recite that limitation on the check's face. The value of any Claim Payments remaining uncashed one hundred eighty (180) calendar days after issuance will revert to the cy pres/common fund per Paragraph 3.04 above.

5.07 Notification to Eligible Claimants. With the Claim Payment described in Paragraph 5.06 above, the Settlement Administrator will include a notice to the applicable Eligible Claimant stating that the enclosed check represents the Eligible Claimant's full and final payment under this Agreement, that the determination of the payment amount is final and not subject to challenge by the claimant, and that Defendant has no continuing obligations to Eligible Claimants regarding the Released Claims.

5.08 Notification to Claimants Deemed Not Eligible. At or before the time of sending Claim Payments to Eligible Claimants, the Settlement Administrator will notify Settlement Class Members deemed ineligible that their claim has been disallowed or rejected, together with a brief statement of the reason(s) why the Settlement Administrator or Defendant disallowed or rejected their claim and that the determination of disallowance is final and not subject to challenge by the claimant.

5.09 Refund. Defendant will be entitled to a refund of any amounts advanced to the Settlement Administrator pursuant to Paragraph 3.05 above that have not been spent or incurred toward the costs of Settlement Administration or sending Class Notice (i) upon the conclusion of the Settlement Administrator's duties under this Agreement, or (ii) to the extent the Settlement Order and Final Judgment is not entered or Final Approval does not occur. Any refunds under this Paragraph shall be delivered to Defendant's bank account via wire or as Defendant may otherwise instruct the Settlement Administrator in writing.

VI. RELEASES

6.01 Sole and Exclusive Remedy. This settlement shall be the sole and exclusive remedy for any and all Released Claims against the Released Parties. Each Settlement Class Member (including anyone claiming by or through him or her) shall be barred from initiating, asserting, or prosecuting the Released Claims.

6.02 Class Release to Defendant and the Released Parties. Effective upon Final Approval, the Representative Plaintiffs, for themselves and as the representatives of the Settlement Class, and on behalf of each Settlement Class Member who has not timely opted out or requested exclusion pursuant to Paragraph 4.04 above, and each of their respective agents, successors, heirs, assigns, and any other person who can claim by or through the Representative Plaintiffs or the Settlement Class Members in any manner, shall have fully, finally, and forever

irrevocably released, relinquished, and forever discharged with prejudice all Released Claims against the Released Parties.

6.03 Individual Releases by Representative Plaintiffs. Effective upon Final Approval, the Representative Plaintiffs, for themselves and on behalf of their respective agents, successors, heirs, assigns, and any other person who can claim by or through them in any manner, shall have fully, finally and forever irrevocably released, relinquished and forever discharged with prejudice any and all claims, known or unknown, alleged or not alleged in this action, that occurred prior to the date of Preliminary Approval that could be attributable to the Released Parties.

6.04 Effect of Releases. With respect to any and all Released Claims, the Parties stipulate and agree that upon Final Approval, the Representative Plaintiffs and Defendant, for themselves and on behalf of their respective agents, successors, heirs, assigns, and any other person who can claim by or through each or any of them, shall expressly waive, and each Settlement Class Member and each Settlement Class Member's respective agents, successors, heirs, assigns, and any other person who can claim by or through each or any of them, in any manner, shall be deemed to have waived, and by operation of the judgment of the Court shall have expressly waived, any and all claims, rights, or benefits they may have under California Civil Code § 1542 and any similar federal or state law, right, rule, or legal principle that may be applicable. The Parties agree and acknowledge that this waiver is an essential term of this Agreement. California Civil Code § 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

VII. MISCELLANEOUS PROVISIONS

7.01 Settlement Purpose of Agreement. This Agreement is governed by the terms of ORS 40.190 and Oregon Rule of Evidence 408 and is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement or its attachments, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as, any admission of the validity of any claim, defense or any fact alleged by any of the Parties in the Action or in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or admission by any Party of any claim, defense or allegation made in the Action or any other action, nor as an admission by any of Defendant, Representative Plaintiffs, or Settlement Class Members of the validity of any fact or defense asserted against them in the Action or any other action. If the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form of Exhibit F, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any portion of this

Agreement shall invalidate this Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect. This includes that the provisional certification of the Settlement Class shall have no bearing in deciding whether the claims asserted in the Action are or were appropriate for class treatment in the absence of settlement. If this Agreement terminates or is nullified, the provisional class certification in Exhibit A shall be vacated by its terms, and the Action shall revert to the status that existed before the execution of this Agreement. Upon nullification of this Agreement, Representative Plaintiffs shall be free to pursue any claims available to her, and Defendant shall be free to assert any defenses available to them, including, but not limited to, denying the suitability of this case for class treatment. Nothing in this Agreement shall be argued or deemed to estop any Party from the assertion of such claims or defenses. In the event the Court should for any reason fail to approve this Agreement in the form agreed to by the Parties, decline to enter the Settlement Order and Final Judgment in the form of Exhibit F, or impose any condition to approval of the settlement to which the Parties do not consent, or if the Settlement Order and Final Judgment is reversed or rendered void, the Parties will negotiate in good faith to address the issues raised by said events.

7.02 Cooperation. The Parties and their counsel will cooperate fully in the process of seeking settlement approval. Class Counsel warrant and agree they will take all steps necessary to obtain and implement Final Approval of this Agreement, to defend the Settlement Order and Final Judgment through all stages of any appeals that may be taken (regardless of who prosecutes the appeal), to give Released Parties full and final peace from further prosecution of the Released Claims, and to give the Settlement Class Members the benefits they enjoy under this Agreement.

7.03 Governing Law. This Agreement is intended to and shall be governed by the laws of the State of Oregon, without regard to its rules regarding conflict of laws.

7.04 Entire Agreement. The terms and conditions set forth in this Agreement constitute the complete and exclusive statement of the agreement between the Representative Plaintiffs, on the one hand, and the Defendant, on the other hand, relating to the subject matter of this Agreement, superseding all previous negotiations and understandings, whether oral or in writing, express or implied, and may not be contradicted by evidence of any prior or contemporaneous agreement, subject only to the companion agreement regarding Defendant's option to terminate this Agreement at its sole discretion pursuant to Paragraph 4.06 above if a certain number of potential Settlement Class Members submit exclusion requests. Any modification of the Agreement that may adversely affect Settlement Class Members' substantive rights must be in writing and signed by Representative Plaintiffs and Defendant; any other modification of the Agreement must be in writing and signed by Class Counsel and DWT.

7.05 Construction of Agreement. The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after extensive negotiation, with consideration by and participation of counsel for all Parties. The Agreement shall be construed according to the fair intent of the language taken as a whole, and not for or against any Party.

7.06 Public Statements. The Parties and their counsel agree to refrain from disparaging one another regarding their conduct in or relating to the practices at issue in the Action and/or this Agreement. Nothing in this Paragraph will prohibit anyone from discussing

documents that are in the public record in this Action with actual or potential Settlement Class Members, objectors, their counsel, and/or their lawful representatives.

7.07 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns.

7.08 **Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

7.09 **Effectiveness of Agreement; Counterparts.** This Agreement shall become effective upon the last date of its execution by all of the persons for whom signature spaces have been provided below. The Parties and their counsel may execute this Agreement in counterparts (any one or all of which may be facsimile or PDF/electronic copies), and execution in counterparts shall have the same force and effect as if all signatories had signed the same document.

7.10 **Use and Retention of Information.** The information included in the Class List, as referenced in Paragraph 2.04 above of this Agreement; any Claim Forms submitted pursuant to Paragraph 5.03 above; and any other documents or information containing the names, addresses, or phone numbers of Settlement Class Members, may be used by Class Counsel only for purposes of implementing this Agreement. All such information shall be returned to DWT within thirty (30) calendar days after the Settlement Administrator has provided Claim Payments to Eligible Claimants.

7.11 **Continuing Jurisdiction.** The Court shall retain exclusive and continuing jurisdiction over this Agreement and over all Parties and Settlement Class Members to interpret, effectuate, enforce, and implement this Agreement. The Court shall have exclusive jurisdiction to resolve any disputes involving this Agreement.

7.12 **Authority.** Each individual signing this Agreement represents and warrants that he or she has the authority to sign on behalf of the person or entity for which that individual signs.

7.13 **Assignment; Third Party Beneficiaries.** None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Settlement Class Member without the express written consent of the other Parties. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties and shall not be construed to confer any right or to afford any remedy to any other person.

7.14 **Communications.** Any communications to the Parties relating to this Agreement shall be sent to all counsel for whom signature spaces have been provided below.

7.15 **Calculation of Time.** All time listed in this Agreement is in calendar days. Time is calculated by (a) excluding the day of the event that triggers the period; (b) counting every day, including intermediate Saturdays, Sundays, and legal holidays; and (c) including the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

IN WITNESS HEREOF the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

AGREED TO AND ACCEPTED:

Dated: _____, 2018

By _____
Kevin Mehrens
*Individually and as Representative Plaintiff for the
Proposed Settlement Class*

Dated: _____, 2018

By _____
Chris Roehm
*Individually and as Representative Plaintiff for the
Proposed Settlement Class*

Dated: _____, 2018

Concept Entertainment-Six, LLC d/b/a Grand
Central Restaurant and Bowling Lounge

By: _____

(printed name): _____

Its: _____

APPROVED AS TO FORM:

Dated: _____, 2018

MICHAEL FULLER
*Attorneys for Representative Plaintiffs and
Proposed Settlement Class*

By: _____
Michael Fuller, OSB No. 09357
OlsenDaines

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Email: michael@underdoglawyer.com

Dated: _____, 2018

LAW OFFICES OF KELLY JONES
*Attorneys for Representative Plaintiffs and
Proposed Settlement Class*

By: _____
Kelly Jones, OSB No. 074217

819 SE Morrison Street #255
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Telephone: (503)847-4329
E-mail: kellydonovanjones@gmail.com

Dated: _____, 2018

DAVIS WRIGHT TREMAINE, LLP
*Attorneys for Defendant Concept Entertainment-
Six, LLC d/b/a Grand Central Restaurant and
Bowling Lounge*

By: _____
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