

SETTLEMENT AGREEMENT

I. Introduction.

This Settlement Agreement (“Agreement”) is hereby entered by and between Defendant Pete’s Flying Aces, Inc. (“Pete’s Flying Aces” or “Defendant”) and the named Plaintiff, David N. Essex (“Plaintiff”), who is acting both individually and in his capacity as the proposed class representative for the proposed settlement class defined herein and in the proposed class action pending in the Superior Court of the State of Washington in and for Pierce County entitled *David N. Essex v. Pete’s Flying Aces, Inc.*, Case No. 22-2-06832-4 (the “Case”).

II. Class Certification.

Solely for the purposes of this Settlement, Plaintiff and Pete’s Flying Aces (hereafter, the “Parties”) agree that this Case should be certified and finally adjudicated as a class action on behalf of the Settlement Class defined herein.

III. Investigations and Due Diligence.

The Parties have conducted substantial informal discovery and investigation of the facts and the law during their respective prosecution and defense of this Case. As part of this review and investigation, the Parties and their counsel have (a) interviewed witnesses; (b) collected and analyzed extensive electronic time records, payroll data, and other information concerning the composition of the Settlement Class and the merits and possible extent of Plaintiff’s claims and Defendant’s defenses; and (c) amply considered and analyzed their respective claims and defenses.

IV. Settlement Negotiations.

The Parties engaged in settlement negotiations between July 2022 and the date of this Agreement. All of the Parties’ settlement negotiations have been conducted in good faith and at arm’s length. Through the Parties’ investigations and communications, the Parties have reached a class action settlement of this Case that they believe to be fair, adequate, and reasonable, and that Plaintiff believes is in the best interest of the proposed Settlement Class. This Agreement memorializes the terms of the final Settlement agreed to by the Parties as the result of the negotiations just described.

V. Defendant’s Denials of Wrongdoing and Non-admission of Allegations.

Pete’s Flying Aces has denied and continues to deny each of the claims and contentions alleged by Plaintiff on his own behalf and on behalf of any members of the proposed class alleged by Plaintiff in the Case. Pete’s Flying Aces has asserted, and continues to assert, defenses and objections to the proposed maintenance of this Case as a class action as if it were to proceed through litigation instead of settlement. Furthermore, Pete’s Flying Aces has expressly denied, and continues to deny, any wrongdoing or legal liability arising out of any of the facts or conduct alleged in this Case. Neither the Settlement, this Agreement, or any document referred to or contemplated herein—nor any action taken to carry out this Agreement—is, may be construed as,

or may be used as an admission, concession or indication by or against Pete's Flying Aces of any fault, wrongdoing, or liability whatsoever. Pete's Flying Aces expressly denies any such fault, wrongdoing, or liability. If the Parties had not reached the Settlement, then Pete's Flying Aces would have continued to vigorously defend against Plaintiff's claims, including seeking denial of full or partial class certification and a full defense verdict at trial. Pete's Flying Aces agrees to this Settlement solely to avoid the burden and expense of further litigation.

VI. Stipulated Settlement and Dismissal

NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, subject to the approval of the Superior Court, that this Case is hereby being compromised and settled on a class action basis pursuant to the terms and conditions outlined in this Agreement and that, if the Parties' Settlement is finally approved by the Superior Court, this Case shall be fully dismissed on the merits and with prejudice, subject to the following terms and conditions:

1. Definitions.

a. **"Effective Date"** means the date when both (1) the Settlement has been finally approved by the Superior Court, and (2) the Superior Court's anticipated order approving the Settlement and dismissing this Case with prejudice (the "Final Judgment") becomes final. For purposes of this subsection, the Superior Court's Final Judgment "becomes final" upon the later of either (a) the expiration of the time for filing an appeal from the Final Judgment or for otherwise seeking appellate review; or (b) if an appeal is timely filed or other appellate review is sought, the date the Mandate or other final affirmance is issued by the appellate court affirming the Final Judgment.

b. **"Settlement"** means the settlement reached by the Parties through the negotiation process described in Paragraph IV above.

c. **"Settlement Administrator"** means CPT Group, Inc., subject to the Superior Court's approval.

d. **"Settlement Class Period"** means the period from June 7, 2019, through and including October 20, 2022.

e. **"Proposed Class"** or **"Proposed Class Members"** means all individuals who were employed by Pete's Flying Aces at its Palace Casino in Lakewood, Washington, and who worked one or more shifts as hourly, non-exempt, non-managerial service employees (i.e., in the position of bartender, busser/dishwasher, food server, bar server, graveyard bar server, line cook, or bar supervisor) at any time during the Settlement Class Period. Pete's Flying Aces represents there are 128 Proposed Class Members.

f. **"Settlement Class"** or **"Settlement Class Members"** means all individuals who are Proposed Class Members, as that term is defined in Section VI.1.e herein, and who do not timely opt-out of the Settlement.

g. **“Hours Worked”** shall mean the total number of hours in which a Settlement Class Member worked for Defendant as an hourly, non-exempt, non-managerial service employee during the Settlement Class Period.

h. The **“Notice of Settlement”** means the form attached hereto as **Exhibit A**.

i. The **“Initial Mailing Date”** is the date the Settlement Administrator first mails the Notice of Settlement approved by the Superior Court to all Proposed Class Members.

j. The **“Notice Deadline”** is sixty (60) days after the Initial Mailing Date.

k. **“Class Counsel”** means Tatiana Hernandez of Law Office of Tatiana Hernandez, P.C., and Craig Ackermann and Brian Denlinger of Ackermann & Tilajef, P.C., subject to the Superior Court’s approval.

l. **“Class Fund”** means the aggregate, gross amount the Parties propose be paid to the Settlement Class as Settlement Awards pursuant to this Settlement. The Class Fund shall be calculated by subtracting the Court-approved Service Award, Settlement Administration Expenses Award, and Attorneys’ Fees and Costs Award from the Maximum Settlement Amount.

m. **“Settlement Awards”** means the amounts the Parties propose be paid to members of the Settlement Class pursuant to this Agreement. The Settlement Awards for each Settlement Class Member shall be a pro rata amount based on the number of Hours Worked by a given Settlement Class Member during the Settlement Class Period as compared with the number of Hours Worked by all Settlement Class Members during the Settlement Class Period.

n. **“Service Award”** means the amount the Parties propose be paid to Plaintiff David N. Essex as a service award in recognition of his efforts in prosecuting the Case and in consideration of his general release set forth below in Section VI.2.a., below. Subject to approval by the Superior Court, the amount paid to Plaintiff David N. Essex for his service award shall be Ten Thousand Dollars (\$10,000.00).

o. **“Settlement Administration Expenses Award”** means the amount the Parties propose be paid to the Settlement Administrator for the processing of the Settlement. Subject to approval by the Superior Court, the amount paid to the Settlement Administrator for the processing of the Settlement shall be up to Eleven Thousand Dollars (\$11,000.00), subject to approval of the Superior Court.

p. **“Attorneys’ Fees and Costs Award”** means the amount the Parties propose be paid to Class Counsel as attorneys’ fees and costs in connection with their prosecution and settlement of the Case, which is to be no more than thirty-three percent (33%) of the Maximum Settlement Amount (i.e., \$32,274.00), and up to \$5,000.00 in costs and expenses, subject to approval of the Superior Court.

q. **“Maximum Settlement Amount”** means the maximum amount Pete’s Flying Aces may be required to pay pursuant to this Settlement, which is the sum of Ninety Seven

Thousand, Eight Hundred Dollars (\$97,800.00), excluding any of Pete's Flying Aces' employer-side share of FICA, FUTA, and other similar, mandatory employer-side payroll taxes. In no event shall the Maximum Settlement Amount exceed the foregoing sum.

r. **"Released Claims"** means any and all claims during the Settlement Class Period, whether known or unknown, that were brought or that could have been brought based on any facts alleged in the Case with respect to: (i) claims for missed, untimely, short, interrupted, and/or otherwise non-compliant meal periods pursuant to Chapter 49.12 RCW, WAC § 296-126-092(1)-(3), and/or any analogous or related federal, state, or municipal law; and (ii) any claims attendant or relating to the foregoing matters set forth in subsection (i) of this Section VI.1.r, including, but not limited to, any claims for unpaid wages, overtime payments, premium payments, double damages, exemplary damages, penalties, interest, and attorneys' fees and costs.

s. **"Pete's Flying Aces"** as used in this Agreement, and as released through the Releases described in Section VI.2., below, includes the named Defendant in the Case, Pete's Flying Aces, Inc., as well as each of its past or current predecessors, successors, and assigns, together with each of their respective parent companies, subsidiaries, related or affiliated companies, members, shareholders, owners, officers, directors, employees, agents, attorneys, and insurers, along with any other individual or entity who could be jointly or severally liable for any of the claims alleged in the Case or released by this Agreement.

2. Releases.

a. As of the Effective Date, Plaintiff David N. Essex shall be deemed to have released and forever discharged Pete's Flying Aces from any and all Released Claims (as defined above in Section VI.1.r.), and, in addition, shall be deemed to have released Pete's Flying Aces from any and all claims, demands, rules or regulations, or any other causes of action of whatever nature, whether known or unknown, which he has or may have against Pete's Flying Aces as of the date of execution of this Agreement. For the avoidance of doubt, and to the maximum extent permitted by law, the foregoing release includes, without limitation, any claim, dispute, or controversy relating to, sounding in, or arising under: (i) Title VII of the Civil Rights Act of 1964; (ii) The Age Discrimination in Employment Act of 1967 ("ADEA"); (iii) The Occupational Safety and Health Act; The National Labor Relations Act, to the extent permitted by law; (iv) The Consolidated Omnibus Budget Reconciliation Act ("COBRA"), to the extent permitted by law; (v) Sections 1981 through 1988 of Title 42 of the United States Code; (vi) The Uniformed Services Employment and Reemployment Rights Act; (vii) The Immigration Reform and Control Act; (viii) The Americans with Disabilities Act of 1990; (ix) The Family and Medical Leave Act, to the extent permitted by law; (x) The Equal Pay Act, to the extent permitted by law; (xi) The Washington Consumer Protection Act, RCW 19.86; (xii) The Washington Law Against Discrimination, as amended, RCW 49.60; (xiii) The Washington Minimum Wage Act, as amended, RCW 49.46; (xiv) The Washington Wage Payment Act, as amended, RCW 49.48; (xv) The Washington wage deduction/rebate statutes, as amended, RCW 49.52; (xvi) The Washington Family Leave Act, as amended, RCW 49.78; (xvii) The Washington Family Care Act, as amended, (xviii) RCW 49.12.265; (xix) The Washington Paid Sick Leave Law, RCW 49.46.200 210; (xx) Any provision of Title 49 of the Revised Code of Washington; (xxi) Any provision of Title 296 of the Washington Administrative Code; (xxii) The Industrial Welfare Act of Washington, RCW 49.12, as amended,

to the extent permitted by law; (xxiii) Any claim alleging the exception to the Industrial Insurance Act of Washington, established by RCW 51.24.020, for injury inflicted with “deliberate intention”; (xxiv) Any claim based on federal, state or local law, rule, regulation or ordinance; (xxv) Any claim for breach of contract or promise, express or implied; (xxvi) Any claim for breach of any term or condition of an employee handbook or policy manual, including any claim for breach of any promise of specific treatment in specific situations; (xxvii) Any common law claim of any kind; and (xxviii) Any basis for recovering costs, fees or other expenses, including attorneys’ fees incurred in these matters.

b. As of the Effective Date, the Settlement and this Agreement will constitute a full and final settlement, release, and waiver by Plaintiff David N. Essex and all members of the Settlement Class of all Released Claims (as defined above in Section VI.1.r.).

3. Payment by Pete’s Flying Aces.

Subject to approval of the Settlement by the Superior Court and the Settlement becoming final, Pete’s Flying Aces agrees to deposit the Maximum Settlement Amount into a Qualified Settlement Fund (“QSF”) set up by the Settlement Administrator for purposes of processing the Settlement and paying the Service Award, the Settlement Administration Expenses Award, the Attorneys’ Fees and Costs Award, and the Settlement Awards. Pete’s Flying Aces will not be responsible for making any additional payments except as expressly set forth below, whether to the Settlement Class Members, to Plaintiff David N. Essex, to Class Counsel, to the Settlement Administrator, or otherwise (with the exception that Pete’s Flying Aces agrees to pay its share of FICA, FUTA, and other similar, mandatory employer-side payroll taxes). By funding the Qualified Settlement Fund, Pete’s Flying Aces will fully discharge its financial obligations under this Agreement and shall have no further financial obligations under this Agreement, whether to the Settlement Class Members, to Plaintiff David N. Essex, to Class Counsel, to the Settlement Administrator, or otherwise (again with the exception that Pete’s Flying Aces agrees to pay its share of FICA, FUTA, and other similar, mandatory employer-side payroll taxes).

4. Calculation of Settlement Awards.

a. Subject to approval by the Superior Court, the calculations of gross (pre-tax) Settlement Awards for Settlement Class Members will be made by the Settlement Administrator based on records that have been or will be submitted to Class Counsel and the Settlement Administrator by Pete’s Flying Aces, which records are presumed to be accurate. Pete’s Flying Aces has provided or will provide data to Class Counsel and the Settlement Administrator reasonably necessary for the calculation of the Settlement Awards in the form of an Excel spreadsheet(s), which shall contain data regarding the total number of hours in which each Proposed Class Member worked for Defendant as an hourly, non-exempt, non-managerial service employee during the Settlement Class Period. To the extent not already produced to Class Counsel and the Settlement Administrator, Pete’s Flying Aces shall provide the Excel spreadsheet(s) containing the foregoing data to Class Counsel and the Settlement Administrator within thirty (30) days after this Agreement is executed. Any data provided to Class Counsel or the Settlement Administrator pursuant to this Agreement shall be used solely for the purposes of administering this Settlement and not for any other purpose. Class Counsel and the Settlement Administrator

shall maintain any data provided pursuant to this Agreement as private and confidential and shall not use or disclose such data to any persons or entities except as required by this Settlement, law or Court order.

b. The Settlement Administrator shall be responsible for calculating the gross amounts of the Settlement Awards for Settlement Class Members in conformity with this Agreement. Every Settlement Class Member will be entitled to a minimum payment of \$5.00; then, as to the balance of the Class Fund, Settlement Class Members will be paid as follows: Each Settlement Class Member's Hours Worked during the Settlement Class Period will be divided by the sum total of all Settlement Class Members' Hours Worked during the Settlement Class Period. This calculation will result in a percentage figure for each Settlement Class Member (the "Settlement Class Period Percentage Figure"). The Settlement Class Period Percentage Figure for each Settlement Class Member will then be multiplied by the remaining Class Fund (i.e., the Class Fund less the minimum \$5.00 payment per Settlement Class Member), with the resulting figure, plus the \$5.00 minimum payment, being paid to the Settlement Class Member. The results of the foregoing calculations for each Settlement Class Member shall be referred to as a Settlement Award (or collectively, the Settlement Awards).

c. The Settlement Administrator shall provide Class Counsel and Pete's Flying Aces with an electronic report setting forth the results of their calculation of the gross Settlement Awards for Settlement Class Members. Pete's Flying Aces and Class Counsel shall have ten (10) days after receiving this electronic report to review the Settlement Administrator's gross Settlement Award calculations for compliance with the terms of this Agreement and to submit any concerns in writing to the Settlement Administrator. Thereafter, the Parties shall confer within five (5) days in an attempt to resolve any disputes relating to the calculations of the gross amounts of Settlement Awards. If the Parties are unable to resolve any disputes about calculating the gross Settlement Awards pursuant to this Agreement, they shall submit their respective positions in writing to the Superior Court, which shall make the final decision regarding any disputed calculations of any Settlement Awards for any Settlement Class Members.

d. **Allocation of Settlement Awards Between Wages and Non-Wages.** One-Third (33%) of each Settlement Award will be treated as wages and subject to normal payroll tax withholdings and payments, and these amounts shall be reported to the taxing authorities and the Settlement Class Members on IRS Forms W-2. Two-Thirds (67%) of each Settlement Award will be treated as non-wages (penalties, enhancements, and prejudgment interest) on which there will be no tax withholding and for which IRS Forms 1099 (marked "Other Income") shall be issued to the taxing authorities and Settlement Class Members.

e. **Separate Payment of Employer-Side Payroll Taxes.** Pete's Flying Aces will separately fund the payment of the required employer share of the payroll taxes associated with the W-2 payments made to Settlement Class Members (including, but not limited to, employer's share of FICA, Medicare, FUTA (if applicable), and any other employer-paid, federal, Washington state, or local requirements). The Settlement Administrator shall calculate this amount and provide the results of its calculations to counsel for Pete's Flying Aces.

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5. Attorneys' Fees and Costs Award.

As part of seeking the Superior Court's final approval of this Settlement, Class Counsel will apply to the Superior Court for an Attorneys' Fees and Costs Award of no more than thirty percent (33%) of the Maximum Settlement Amount in fees (i.e., \$32,274.00), and up to \$5,000.00 in cost and expenses.

6. Service Award.

Subject to approval by the Superior Court, in addition to a Settlement Award computed as described above, Plaintiff David N. Essex shall receive a separate Service Award, which will be treated as non-wages, on which there will be no payroll tax withholdings and for which an IRS Form 1099 (marked "Other Income") shall be issued to the taxing authorities and Plaintiff. Subject to approval by the Superior Court, the Service Award shall be in the amount of Ten-Thousand Dollars (\$10,000.00).

7. Settlement Administration.

a. The Settlement Administrator shall be responsible for mailing and emailing the Notice of Settlement to the Proposed Class, tracing undeliverable mailings, recording and tracking responses to the mailings to the Proposed Class, tracking and responding to any inquiries made by any member of the Proposed Class, reviewing disputes to its calculation of the Settlement Awards, and any other related tasks mutually agreed to by the Parties. The Settlement Administrator shall also be responsible for establishing a Qualified Settlement Fund ("QSF") pursuant to Section 468B(g) of the Internal Revenue Code for purposes of administering this Settlement, as well as issuing the necessary checks for the Service Award, the Settlement Administration Expenses Award, the Attorneys' Fees and Costs Award, and the Settlement Awards, issuing all required tax documents (such as Forms W-2 and 1099), and performing all related tax reporting to taxing authorities and to Pete's Flying Aces.

b. The Settlement Administrator will perform the foregoing duties based on data provided by Class Counsel and Pete's Flying Aces, which data shall be presumed to be correct. In addition to the data described in Section VI.4., above, Pete's Flying Aces shall, within thirty (30) days after this Agreement is preliminarily approved by the Superior Court, provide the Settlement Administrator with an Excel spreadsheet containing the following information for each member of the Proposed Class: (i) name; (ii) last known address; (iii) last known telephone (if known and reasonably accessible); (iv) email address (if known and reasonably accessible); and (v) social security number. Other data will be provided, upon request from the Settlement Administrator, as reasonably necessary to complete their settlement administration duties under this Agreement. All such data shall be treated as private and confidential and the Settlement Administrator shall not use or disclose any such data to any persons or entities except as required by this Settlement, law or Court order.

c. The Settlement Administrator shall also have the responsibility to determine any Proposed Class Member's eligibility for a Settlement Award (i.e., to determine whether any Proposed Class Member is a Settlement Class Member). Each Proposed Class Member who does

not submit a valid and timely request for exclusion will automatically be a Settlement Class Member and eligible to receive a Settlement Award. Within five (5) days after the Notice Deadline, the Settlement Administrator shall provide Pete's Flying Aces and Class Counsel with (1) an electronic report setting forth the names and identities of all Proposed Class Members who submitted a valid and timely Exclusion Letter in conformity with this Agreement; (2) an electronic report setting forth the names and identities of all Proposed Class Members who did not submit a valid and timely letter requesting exclusion in conformity with this Agreement ("Exclusion Letter"); (3) copies of all Exclusion Letters returned or received; and (4) copies of all objections returned or received. Pete's Flying Aces and Class Counsel shall be entitled to review the eligibility determinations made by the Settlement Administrator for compliance with the terms of this Agreement. The Settlement Administrator shall retain the originals of all Exclusion Letters returned, along with their envelopes, and objections received. Pete's Flying Aces and Class Counsel shall have seven (7) days after receiving the electronic report and related documentation from the Settlement Administrator to challenge any Exclusion Letter and/or eligibility determination in writing directed to the Settlement Administrator. Within five (5) days after submitting such concerns to the Settlement Administrator, the Parties shall meet and confer in an attempt to resolve any disputes relating to the subject Exclusion Letters and/or eligibility determinations. In the event the Parties are unable to reach resolution on any disputes relating to the subject Exclusion Letters and/or eligibility determinations, the Parties shall submit their respective positions in writing to the Superior Court, which shall make the final decision regarding the subject Exclusion Letters and/or eligibility determinations. Thereafter, the Settlement Administrator shall provide the final results of its eligibility determinations to Pete's Flying Aces and Class Counsel, which results will include the names of all Settlement Class Members and the names of all individuals who opted out of the Settlement.

d. In the event the number of Proposed Class Members who have timely requested exclusion from the Settlement exceeds ten percent (10%) of the total number of Proposed Class Members (i.e., if 13 or more Proposed Class Members submit timely and valid Exclusion Letters, assuming the class size is and remains 128), Pete's Flying Aces has the right, in its sole discretion, to terminate or not to terminate the Settlement. If Pete's Flying Aces chooses to exercise this right, it shall give written notice to Class Counsel within seven (7) days after receiving the report from the Settlement Administrator required by Section VI.7.c., above. In the event that the Proposed Class contains ten percent (10%) more Proposed Class Members, as of the hearing on Plaintiff's motion for preliminary approval of the Settlement, than the 128 of which Class Counsel were informed in October 2022 (i.e., 141 or more total Proposed Class Members), then Plaintiff will have the right to void the Settlement unless Pete's Flying Aces agrees to proportionately increase the Maximum Settlement Amount to account for those individuals.

e. As part of seeking the Superior Court's final approval of this Settlement, Class Counsel will apply to the Superior Court for a Settlement Administration Expenses Award of no more than Eleven Thousand Dollars (\$11,000.00). The costs, fees and expenses incurred by the Settlement Administrator in administering this Settlement shall be paid from the Settlement Administration Expenses Award approved by the Court.

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8. Notice/Approval of Settlement Class Certification and Settlement Agreement.

As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Superior Court approval of the Settlement, certifying the Settlement Class, notifying the members of the Proposed Class, obtaining final Superior Court approval of the Settlement, and implementing payment of Settlement Awards to Settlement Class Members:

a. Class Counsel shall file a motion with the Superior Court to obtain preliminary approval of the Settlement in conformity with this Agreement and authorizing the issuance of the Notice of Settlement to members of the Proposed Class.

b. For purposes of this Settlement, Class Counsel will ask the Superior Court to enter an order certifying the Settlement Class, preliminarily approving the Settlement and this Agreement, approving the Notice of Settlement to the Proposed Class, and setting a date for a Final Approval Hearing to determine whether the Court will grant final approval of the Settlement and this Agreement (the "Preliminary Approval Order"). Class Counsel shall provide Pete's Flying Aces with a draft of the proposed motion for preliminary approval and Preliminary Approval Order for review and comment at least five (5) court days before the motion is filed. Plaintiff agrees to consider in good faith all comments of Pete's Flying Aces on the draft. Pete's Flying Aces will not oppose Plaintiff's motion, so long as the motion for preliminary approval and Preliminary Approval Order are in conformity with this Agreement.

c. Subject to the Superior Court's approval, Notice of the Settlement shall be provided using the following procedures:

- (1) Within forty (40) days of the date the Superior Court grants preliminary approval to the Settlement and issues its Preliminary Approval Order, the Settlement Administrator sends the Notice of Settlement to all Proposed Class Members by mail.
- (2) The Notice of Settlement shall provide that Proposed Class Members who do not opt out (i.e., who wish to become Settlement Class Members) and who wish to object to the Settlement must submit to the Settlement Administrator a written statement objecting to the Settlement. Such written statement must be postmarked or delivered to the Settlement Administrator on or before the Notice Deadline.
- (3) The Notice of Settlement shall also provide that Proposed Class Members who wish to exclude themselves (i.e., opt out) from the Settlement must mail a letter to the Settlement Administrator requesting exclusion from the Settlement on or before the Notice Deadline. Proposed Class Members who fail to submit a valid and timely Exclusion Letter on or before the Notice Deadline shall be deemed Settlement Class Members and shall be bound by all terms of the Settlement and any Final Judgment entered in this Case if the Settlement is approved by the Superior Court, regardless of whether they have objected to the Settlement.
- (4) The Notice of Settlement shall also advise Settlement Class Members that they need do nothing (other than not affirmatively opt out) in order to

receive a Settlement Award.

d. The Parties agree that neither they nor their counsel will solicit or otherwise encourage any of the Proposed Class Members to opt out or object to the Settlement or to appeal from the Superior Court's Final Judgment approving the Settlement.

e. Should any Notice of Settlement be returned as undeliverable without a forwarding address, the Settlement Administrator will perform a reasonable "skiptrace" search using the National Change of Address database to obtain an updated address and, if located, shall make a second attempt at mailing the Notice of Settlement. If such Notice of Settlement is again returned as undeliverable, no further attempts at delivery of the Notice of Settlement are required to be made. Notwithstanding the foregoing, the Settlement Administrator or Class Counsel may mail or email a Notice of Settlement to a Proposed Class Member at an address or email address obtained by other means if the Notice of Settlement is returned as undeliverable or upon the Proposed Class Member's request for the same.

f. Within the later of twenty one (21) days after the Notice Deadline, or seven (7) days following resolution of challenge as set forth in Section VI.7.c., above, Class Counsel must file with the Superior Court a supplemental memorandum in support of final approval of the Settlement to inform the Court of any Proposed Class Members who have opted out of the Settlement, to provide the Court with copies of all written objections received from any Proposed Class Member with copies of their envelopes, and to respond to any objections to the Settlement.

g. Subject to the Superior Court's availability and direction but no sooner than twenty-one (21) days after the Notice Deadline, a Final Approval Hearing shall be held for the Superior Court to determine whether to grant final approval of the Settlement, including Class Counsel's Attorneys' Fees and Costs Award, the Settlement Administration Expenses Award, and the Service Award to the Plaintiff. If the Superior Court finally approves the Settlement, the Parties will promptly and jointly ask the Superior Court to enter a Final Judgment dismissing the Case with prejudice and without an award of attorneys' fees, expenses or costs to any Party except as provided herein.

h. After entry of the Final Judgment, and subject to Rule 7.2 of the Washington Rules of Appellate Procedure, the Superior Court shall have continuing jurisdiction solely for the purposes of enforcement of the Settlement Agreement and addressing (a) settlement administration matters, and (b) such post-Final Judgment matters as may be appropriate under Court rules.

i. Within ten (10) business days after the Effective Date, Pete's Flying Aces shall also deposit the Maximum Settlement Amount into the QSF. Pete's Flying Aces will also transfer into the QSF an amount equal to the estimated employer share of the payroll taxes required on the W-2 payments made to Settlement Class Members (including employer's share of FICA, Medicare, FUTA (if applicable), and any other employer-paid, federal, Washington state, or local requirements) as estimated by the Settlement Administrator. Such payment shall be made by Pete's Flying Aces upon the latter of ten (10) business days after the Effective Date or within ten (10) business days after the Settlement Administrator provides its estimate of the employer-side payroll

taxes. Thereafter, if there is any dispute relating to the amount needed for the employer share of required payroll taxes, the Parties and Settlement Administrator shall confer within five (5) days in an attempt to resolve this dispute. In the event they are unable to reach resolution of any such dispute, the Parties shall submit their respective positions in writing to the Superior Court, which shall make the final decision regarding the amount required for the employer share of payroll taxes. The QSF will hold all funds transferred by Pete's Flying Aces pending the issuance of the Service Award, the Settlement Administration Expenses Award, the Attorneys' Fees and Costs Award, and the Settlement Awards. Until the date that Pete's Flying Aces' funding of the QSF is due, Pete's Flying Aces shall have sole and complete control over all such funds and shall have no obligation to segregate such funds or to place them in escrow or to otherwise earmark them before the funding deadline.

j. The Settlement Administrator shall issue checks for the Service Award, the Settlement Administration Expenses Award, the Attorneys' Fees and Costs Award, and the Settlement Awards within fifteen (15) business days of the Effective Date. Settlement Award checks for each Settlement Class Member shall include an amount for wages and a separate amount for non-wages (penalties, enhancements, and prejudgment interest). The Settlement Administrator shall withhold, and pay to the appropriate taxing authority(ies), all federal, Washington state, and local withholding taxes from each amount for wages, and shall issue appropriate IRS Forms W-2 for each amount for wages. The non-wages (penalties, enhancements, and prejudgment interest) amount shall not be subject to withholdings and shall be reported on an IRS Form 1099 (marked "Other Income") issued by the Settlement Administrator. Using the funds transferred into the QSF by Pete's Flying Aces for the employer share of the payroll taxes required on the W-2 payments, the Settlement Administrator will also pay all of the required employer share of payroll taxes in connection with issuing the wage checks to Settlement Class Members, including the employer's share of FICA, Medicare, FUTA (if applicable), and any other employer-paid, federal, Washington state, and local requirements.

k. No later than one hundred sixty (160) days after the Settlement Administrator issues the Settlement Award checks, Class Counsel shall file a Satisfaction of Judgment confirming that the payments required by the Final Judgment have been made and that no further actions are needed to comply with the Final Judgment. This shall terminate the Court's jurisdiction over the Case.

l. Should any Settlement Award checks be returned as undeliverable without a forwarding address, the Settlement Administrator will perform a reasonable "skiptrace" search using the National Change of Address database to obtain an updated address and, if located, shall make a second attempt at mailing the Settlement Award Check. The Settlement Administrator shall mail any Settlement Class Member his or her Settlement Award check if he or she contacts the Settlement Administrator and provides a correct mailing address within ninety (90) days after the initial distribution of the Settlement Award checks. If contacted by a Settlement Class Member, Pete's Flying Aces shall instruct the member to contact the Settlement Administrator or Class Counsel. No later than one hundred twenty (120) days after the initial distribution of the Settlement Award checks, the Settlement Administrator shall provide both Parties with an accounting indicating which funds have been distributed to Settlement Class Members and which, if any, checks to Settlement Class Members have not been negotiated by that time. At this same

time, the Settlement Administrator shall also provide Pete's Flying Aces with copies of all IRS Forms W-2 and IRS Forms 1099 documents issued in connection with the payment of the Settlement Awards, and any other tax documentations reasonably required by Pete's Flying Aces. In the event any QSF funds have not been distributed by one hundred twenty (120) days after the initial distribution of the Settlement Award checks, or any checks mailed to Settlement Class Members have not been negotiated within one hundred eighty (180) days after distribution of the Settlement Award checks, such funds shall be sent by the Settlement Administrator to the State of Washington with the associated name of the Settlement Class Member pursuant to Washington's Unclaimed Property Act (RCW 63.29, *et seq.*).

m. If the Superior Court does not enter an Order preliminarily or finally approving the Settlement, or if the Settlement does not become final for any other reason, this Agreement shall be null and void. In such case, the parties shall proceed in all respects as if this Agreement had not been executed. In the event an appeal is filed from the Superior Court's Final Judgment, or from any other appellate review that is sought prior to the Effective Date, funding and administration of the Settlement shall be stayed pending final resolution of the appeal or any other form of appellate review.

9. No Effect on Employee Benefits.

This Settlement, and any payments made under the Settlement to Settlement Class Members, shall have no effect on the eligibility for and/or calculation of employee benefits of any Settlement Class Members.

10. Miscellaneous Provisions.

a. The Parties agree to stay all further proceedings in this Case, except such proceedings as are necessary to implement and complete this Settlement and/or to implement this Agreement, pending the Final Approval Hearing to be conducted by the Superior Court and the Effective Date of the Settlement.

b. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

c. This Agreement constitutes the entire Agreement among these Parties. No representations, warranties or inducements have been made to any Party concerning this Agreement, other than the representations, warranties and covenants contained and memorialized in this Agreement and the documents it requires (such as the Notice of Settlement).

d. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to enter into this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement this Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Settlement or this Agreement, or on any supplemental

provisions that may become necessary to effectuate the terms of this Settlement or this Agreement, then either Party may seek the Superior Court's assistance to resolve such disagreement.

e. This Agreement shall be binding upon, and shall inure to the benefit of, the successors of the Parties hereto, as previously defined.

f. All terms of this Agreement shall be governed by and interpreted according to the laws of the State of Washington.

g. In the event that one or more of the Parties institutes any legal action against any other party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful party or Parties shall be entitled to recover from the unsuccessful party or Parties reasonable attorneys' fees and costs, including expert witness fees and costs incurred in connection with any enforcement actions.

h. This Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, either by original signature, facsimile signature, or electronic Docu-Sign signature, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties.

i. Plaintiff and Pete's Flying Aces believe that this is a fair, reasonable and adequate settlement, and have arrived at this Settlement through arm's-length negotiations, taking into account all relevant factors, present and potential.

j. The Parties, and each of them, represent that they have not made, and that they will not make any disclosure of the fact of Settlement or any of the Settlement terms prior to Class Counsel filing the motion for preliminary approval with the exception of disclosures made to those persons who are within each Party's attorney-client privilege.

k. The Parties, and each of them, agree that they have not and will not, prior to the Effective Date: (a) affirmatively contact any member of the media regarding this Settlement; or (b) issue any press releases regarding this Settlement. Plaintiff's counsel and Plaintiff further agree that in response to any inquiry from the media prior to the Effective Date, they will make no comment beyond referring the reporter making the inquiry to the Court file for this Case or to Class Counsel's notice website, which may contain information about the Settlement. Plaintiff's counsel may create a notice website with information about this Settlement after preliminary approval of this Settlement is obtained from the Superior Court, which notice website may include a copy of this Agreement and any other documents filed with the Superior Court.

l. Pete's Flying Aces agrees that it will not engage in discrimination or retaliation of any kind against the Class Representative as a result of filing this action, or for giving testimony, assistance, or participating in any manner in an investigation, proceeding, or hearing pursuant to this action, or any Proposed Class Member for choosing to participate or not participate in this Settlement.

IT IS SO AGREED.

**LAW OFFICE OF TATIANA
HERNANDEZ, P.C.**

LANE POWELL PC

DocuSigned by:
Tatiana L. Hernandez, Esq.

Tatiana Hernandez
*Counsel for Named Plaintiff David N.
Essex and Proposed Class Counsel*

Callie A. Castillo
Counsel for Pete's Flying Aces, Inc.

Dated: 11/21/2022

Dated: _____

ACKERMANN & TILAJEF, P.C.

DEFENDANT

DocuSigned by:
[Signature]

Craig Ackermann
Brian Denlinger
*Counsel for Named Plaintiff David N. Essex
and Proposed Class Counsel*

Pete's Flying Aces, Inc.
By: _____
Its: _____

Dated: 11/21/2022

Dated: _____

**PLAINTIFF AND PROPOSED CLASS
REPRESENTATIVE**

DocuSigned by:
[Signature]

David N. Essex, individually and on
behalf of the Settlement Class

Dated: 11/18/2022

IT IS SO AGREED.

**LAW OFFICE OF TATIANA
HERNANDEZ, P.C.**

LANE POWELL PC

Tatiana Hernandez
*Counsel for Named Plaintiff David N.
Essex and Proposed Class Counsel*

Callie A. Castillo
Callie A. Castillo
Counsel for Pete's Flying Aces, Inc.

Dated: _____

Dated: 11/28/2022

ACKERMANN & TILAJEF, P.C.

DEFENDANT

Craig Ackermann
Brian Denlinger
*Counsel for Named Plaintiff David N. Essex
and Proposed Class Counsel*

Steven R. Mitchell
Pete's Flying Aces, Inc.
By: STEVEN R MITCHELLS
Its: PRESIDENT

Dated: _____

Dated: 11/20/22

**PLAINTIFF AND PROPOSED CLASS
REPRESENTATIVE**

David N. Essex, individually and on
behalf of the Settlement Class

Dated: _____