

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, including all exhibits attached hereto, (“Agreement”) is made and entered into by and between, on the one hand, James Stevens and (“Named Plaintiff”) on behalf of himself and a putative collective of individuals he seeks to represent in the lawsuit *James Stevens v. 3 Squares Diner, LLC*, United States District Court for the Middle District of Georgia, Civil Action File Number 7:24-CV-00027-WLS (“the Action”), and on the other hand, Defendant 3 Squares Diner, LLC (“3 Squares” or “Defendant,” and together with Named Plaintiff, the “Parties”)

I. Recitals

A. On March 22, 2024, Named Plaintiff filed a complaint against 3 Squares in the United States District Court for the Middle District of Georgia, bearing Civil Action File Number 7:24-CV-00027-WLS, arising out of alleged violations of the Fair Labor Standards Act (“FLSA”). Specifically, Named Plaintiff alleged that 3 Squares violated the FLSA by failing to pay Named Plaintiff and other similarly situated employees an overtime rate for the hours which they worked over forty in each workweek and further by making unlawful deductions of 30 minutes from the time records of Named Plaintiff and other similarly situated employees (servers and line cooks) for meal periods;

B. In the Complaint that he filed, Named Plaintiff sought to represent a collective consisting of all line cooks and servers whose time records reflect that a 30 minute deduction was taken for a meal break;

C. Defendant filed its Answer and Affirmative Defenses on May 24, 2024;

D. The Parties have exchanged discovery including timesheets, pay stubs, W-2 forms, tax documents, schedules, employee lists and job descriptions for employees of nine of Defendant's 3 Squares Diner restaurant locations;

E. On October 14, 2024, Stevens filed a Motion for Conditional Certification (Doc. No. 24);

F. On December 5, 2024, the Parties attended a private mediation before A. Lee Parks, Esq., of Parks, Chessin & Walbert. The mediation resulted in an agreement in principle to settle the claims alleged in the Action;

G. On December 18, 2024, the Parties filed a Notice of Settlement with the Court. (Doc. 32) On December 20, 2024, this Court denied as moot Plaintiff's pending Motion for Conditional Certification and directed the Parties to submit a motion for settlement approval by no later than January 20, 2025. (Doc. 33). The filing deadline was subsequently extended to February 5, 2025 (Doc. No. 35);

H. The purpose of this Settlement Agreement is to settle all of the Released Claims between the Named Plaintiff and Participating Collective Members, on the one hand, and Defendant on the other;

I. Counsel for the Named Plaintiff and the Collective ("Class Counsel") has analyzed and evaluated the merits of the claims made against Defendant in the Action, and the impact of this Agreement on the Named Plaintiff and putative members of the collective, and based upon Class Counsel's analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Action, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Class Counsel is satisfied that the terms and conditions of this

Agreement are fair, reasonable and adequate and that this Agreement is in the best interest of the Plaintiff and the putative members of the collective;

J. 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 hereto agree to a full and complete settlement of the Litigation on the following terms and conditions:

II. Definitions

A. “Action” means the lawsuit styled *James Stevens, on behalf of himself and all others similarly situated v. 3 Squares Diner, LLC*, United States District Court for the Middle District of Georgia, Civil Action File Number 7:24-CV-00027-WLS.

B. “Agreement” means this Settlement Agreement and the Exhibits attached or incorporated herein, including any subsequent amendments and any exhibits to such amendments.

C. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to Class Counsel to compensate them for their fees and expenses in connection with the Action.

D. “Business Day” means a day of the year that is not a Saturday, Sunday or Legal Holiday.

E. “Class Counsel” means Lemberg Law, L.L.C., 43 Danbury Road, 3rd Floor, Wilton, CT 06897.

F. “Collective” or “Collective Members” means Plaintiff and all hourly, non-exempt employees who worked at 3 Squares restaurant locations as line cooks or servers, from April 1, 2022 through February 5, 2025, who were subject to the deduction of 30 minute unpaid meal period(s) from their wages. A list of the Collective Members is attached hereto as Exhibit C.

G. “Collective Notice” means the form attached hereto as Exhibit A.

H. “Defendant” means Defendant 3 Squares Diner, LLC.

I. “Defendant’s Counsel” means Watson Spence, LLP; 320 W. Residence Avenue, Albany, Georgia, 31702.

J. “Execution Date” means the date on which this Agreement is signed by all parties.

K. “Final Approval Order and Judgment” means the District Court’s order(s) approving the settlement and this Settlement Agreement, and the judgment entered pursuant to the Court’s order(s).

L. “Final Settlement Date” means the date on which the Final Approval Order and Judgment approving this Agreement is entered by the District Court.

M. “Parties” means the Named Plaintiff and Defendant, collectively.

N. “Participating Collective Members” means each Collective Member who timely opts into the Collective by filing a Notice of Consent to Become Part Plaintiff (“Consent Form”). The Participating Collective Member include the following persons who already returned consent forms: Jessica McCall, Briana Palmer, Breanna Hobgood, Santanna Hobgood, Brandy Apperson, and Janice Wilson.

O. “Plaintiff” and “Named Plaintiff” means James Stevens.

P. “Preliminary Approval Order” means the order to be entered by the District Court preliminarily approving the settlement and the agreed form which is attached as Exhibit B.

Q. “Released Claims” means the claims released by this Agreement.

R. “Settlement Administration Costs” means the expenses incurred by the Settlement Administrator in providing Collective Notice as approved by the Court and mailing checks. Settlement Administration Costs shall be paid by 3 Squares separate and apart from its payments to Plaintiff, Collective Members and Class Counsel.

S. “Settlement Administrator” means a vendor selected by the Parties and subject to approval by the Court, whose responsibilities will include to mail the Collective Notice to Collective Members and administer the calculation, allocation, and distribution of payments to the Named Plaintiff, the Collective and Class Counsel.

T. The terms “he or she” and “his or her” include “it” or “its” where applicable.

III. Payments to Named Plaintiff and Participating Collective Members

Pursuant to this Agreement, Defendant will make available to the Named Plaintiff and Participating Collective Members the relief described herein.

A. Defendant will pay a gross amount of \$55,000 to be apportioned among the Named Plaintiff and Collective Members in accordance with the schedule attached as Exhibit “C” to this agreement and as further described in this agreement. The payment schedule attached as Exhibit “C” represents good faith estimates by the Parties’ Counsel of Plaintiff and Collective Member’s proportionate share of the settlement amount based on the number of 30-minute unpaid meal periods reflected in Defendant’s records. These amounts are based on the documents and information made available to the Parties’ Counsel during the discovery process, including but not limited to, payroll records and time sheets for the Collective.

B. The Participating Collective Members understand that the payments to be made to each, as reflected in Exhibit C, do not necessarily represent the exact amount that he or she may be owed by the Defendant for back wages, unpaid wages, or other damages and understand that Defendant disputes Plaintiff’s claims. This agreement is a compromise between the parties in order to end this litigation.

C. The Notice delivered to each Collective Member will include the approximate amount of that individual’s settlement payment.

D. In addition to the amounts set forth in Section III(A) above, Defendant will separately pay a gross amount of \$5,000 to the Named Plaintiff in exchange for his agreement to provide a general release of all claims against Defendant.

IV. Tax Characterization

A. The settlement payments to the Named Plaintiff and Participating Collective Member shall be characterized as 50% as back wages reported via IRS Form W-2 with appropriate tax withholdings made therefore, and 50% liquidated damages paid without tax withholdings reported via IRS Form 1099.

B. The Settlement Administrator shall determine the appropriate tax treatment of the W-2 payments to Participating Collective Members. All wage payments shall be subject to applicable withholding taxes including the portion of social security withholding paid by the employer which in this case will be paid from the \$55,000 gross payment. The payroll withholding will be done using the W-4 last on file with 3 Squares or if none is on file, the withholding will be based on one exemption unless a new signed W-4 is submitted by the Participating Collective Member.

C. The Settlement Administrator is responsible for issuing and filing appropriate forms associated with payments of any amounts to Participating Collective Members, including, but not limited to, issuing the W-2 Forms for all wage amounts paid to Participating Collective Members.

V. Payment of Attorneys' Costs and Fees.

A. No later than fourteen (14) days prior to the Final Hearing Date Class Counsel will petition the Court for an award of attorneys' fees and costs in an amount not to exceed \$35,000.00.

B. Defendant agrees to pay Class Counsel all attorney's fees and costs awarded by the Court.

C. The outcome of any proceeding related to Class Counsel's application for attorneys' fees and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Settlement Approval.

D. Defendant's payment of attorney's fees and costs to Class Counsel will be made separate and apart from the payments to the Named Plaintiff and Participative Collective Members set forth in Section III above.

E. The attorneys' fees and costs shall be paid by 3 Squares at the time the payments to Named Plaintiff and Participating Collective Members are mailed.

VI. Settlement Administration Process and Settlement Checks

A. The Settlement Administrator will be selected by the Employer's counsel subject to approval by Plaintiffs' counsel, which shall not be unreasonably withheld.

B. The Parties agree to reasonably cooperate with the Settlement Administrator.

C. The Settlement Administrator shall be responsible for, in no particular order of importance: (i) preparing, printing, and disseminating the Notice and Consent to Join/Opt-In Form to Collective Members; (ii) tracking and promptly furnishing to Class Counsel and Defendant's Counsel copies of written or electronic communications of Collective Members that the Settlement Administrator receives, including the recipe of all Consent Forms and objections; (iii) preparing and mailing settlement checks; (iv) preparing and issuing payment for Class Counsel's attorneys' fees, expenses, and costs awarded by the Court; (v) administering all obligations with respect to Employer Payroll Taxes and related tax issues under this Agreement, including issuing IRS Form W-2 and IRS Form 1099 forms for all amounts paid to Participating Collective Members pursuant to this Agreement; (vi) responding to inquiries of Class Counsel and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; (vii) copying counsel for

all Parties on material correspondence; (viii) maintaining adequate records of its activities, including the dates of the mailing of any Notice and settlement checks and the date of receipt of any Notices returned as undeliverable, and other communications with Collective Members; (ix) providing Class Counsel and Defendant's Counsel with all information, documents, and calculations necessary to determine the settlement check amounts to Participating Collective Members (which calculations shall be subject to approval of the Parties); (x) providing a weekly email to Class Counsel and Defendant's Counsel regarding the status of the mailing of the Notice to Collective Members, Consent Forms and objections received from Participating Collective Members, the status of cashing of settlement checks, the claims administration process, or any other aspect of the claims administration process, subject to the terms of this Agreement; (xi) retain copies of all endorsed settlement checks which are cashed by Participating Collective Members, and timely provide Defendant's Counsel with copies of same; and (xii) such other tasks as the Parties mutually agree. Other than as set forth in this Agreement, the Settlement Administrator shall not initiate communications with any Collective Members. The Parties will have equal access to the Settlement Administrator.

D. No later than fourteen (14) days prior to the Final Fairness Hearing, the Settlement Administrator shall certify in writing jointly to Class Counsel and Defendant's Counsel: (i) a list of all Participating Collective Members who submitted a Consent Form; (ii) the aggregate total of the Settlement Checks to be issued to all Settlement Participants; and (iii) a list of any objections submitted by Collective Members. .

E. A Settlement Fund will be established by the Settlement Administrator after the Court's final approval of the settlement and the opt-in period has concluded. Payments into the

Settlement Fund by 3 Squares will be made within ten (10) days after the Claims Administrator's determination of the amount needed to fund the settlement payments.

F. The Settlement Administrator will mail the Settlement Checks to Participating Collective Members within forty-five (45) days of entry of the final approval order if there are no appeals from the Final Approval Order. If there is an appeal, the Settlement Administrator will mail the Settlement Checks within fourteen (14) days after resolution of the appeals in favor of final approval of the settlement.

G. Settlement Participants will have one hundred and twenty (120) days from the date of the mailing of the Settlement Checks to cash their Settlement Checks.

H. After the expiration of the 120-day period following mailing of the Settlement Checks to Participating Collective Members, any check not cashed shall become a part of the reversion to Employer.

I. Within one hundred and thirty-five (135) days from the date the Settlement Checks are mailed, the Settlement Administrator shall provide the Parties with two signed (front and back) copies of each Settlement Check that was timely deposited.

VII. Release and Wavier

A. The Parties agree to the following releases and waivers, which shall take effect upon the entry of the Final Order and Judgment.

B. By operation of the entry of the Final Approval Order and Judgment, all Participating Collective Members other than the Named Plaintiff, release all federal, state and local wage and hour claims, including related claims for penalties, interest, liquidated damages, attorney's fees, costs and expense, against Defendant for the period between April 1, 2022 and February 5, 2025.

C. By operation of the entry of the Final Approval Order and Judgment, Named Plaintiff generally releases all individual claims of any type against Defendant for the period between April 1, 2022 and February 5, 2025.

D. The claims released in Sections VII(B) and (C) comprise the Released Claims.

E. Nothing in this Release shall preclude any action to enforce the terms of the Agreement.

F. The Named Plaintiff and the Participating Collective Members hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Agreement and shall be included in any Final Approval Order and Judgment entered by the Court.

G. The Parties will seek and obtain from the Court, as a condition of settlement, a Final Order and Judgment as further described below.

VIII. Preliminary Approval

A. On or before February 5, 2025, Parties shall jointly move the District Court where the Action is pending for preliminary approval of the Parties' Settlement Agreement, including the entry of the Preliminary Approval Order attached to this Agreement as Exhibit B, and approval of the proposed Notice.

B. The Motion for Preliminary Approval of the Settlement shall, in addition to seeking preliminary approval of this agreement, seek certification of the Collective for settlement purposes; authorize the Collective Notice to be provided to all Collective Members; and the setting of the Final Fairness Hearing date.

IX. Collective Notice

A. Within ten (10) days of entry of the Preliminary Approval Order by the Court, Defendant shall provide the Settlement Administrator, in a secure electronic form to protect any personally identifying information, for all Collective Members, the following information: name, social security number, last known address, telephone number and/or email address and first/last dates of work in relevant position(s) between April 1, 2022 and February 5, 2025, as that information exists on file with Defendant. Defendant will contemporaneously provide the Settlement Administrator with a copy of the Class List attached hereto as Exhibit C containing the associated names of the Collective Members and the settlement payment amounts to Collective Members.

B. Within thirty (30) days of entry of the Preliminary Approval Order by the Court, and after the last known postal addresses of all Collective Members are updated through the National Change of Address Database (NCOA), the Claims Administrator shall mail to all members of the Collective, by First Class U.S. Mail, postage-prepaid, the Notice and the Consent Form, with an enclosed, postage-paid return envelope and a QR Code for response. In addition, the Claims Administrator will also email a copy of the Notice and Consent Form to all Collective Members for whom an email address has been provided by Defendant to the Claims Administrator.

C. The proposed Notice, a copy of which is attached to the Agreement as Exhibit A, shall contain a general description of the method by which settlement payments were calculated and the approximate amount of each Collective Members' settlement check.

D. The Notice will inform Collective Members that they have sixty (60) days from the date of mailing of the Notice to submit a Consent Form and any Objections to the Settlement and

will further provide instructions for returning the Consent Form to the Settlement Administrator by mail, email or online via the QR Code.

E. If any Notice sent under this section is returned by the Postal Service as undeliverable, the Settlement Administrator will take all reasonable steps to obtain the correct address for the Collective Members for whom a Notice is returned as undeliverable and shall attempt one re-mailing per Collective Member, including using social security numbers to obtain better address information. The Settlement Administrator will notify Class Counsel and Defendant's Counsel of any Notice sent to a Notice Recipient that is returned as undeliverable after the first mailing, as well as any such Notice returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement.

X. Final Fairness Hearing and Final Approval Order and Judgment

F. The Parties will request that the Court schedule a Final Fairness Hearing.

G. No later than fourteen (14) days prior to the Final Fairness Hearing days after entry of the Preliminary Approval Order, the Parties shall file their Motion for Final Approval of the Parties' Settlement and a proposed Final Approval Order and Judgment. A copy of the proposed Final Approval Order and Judgment is attached to this Agreement as Exhibit D.

H. In the Parties' Motion for Final Approval of the Parties' Settlement and at the Final Fairness Hearing the Parties shall request that the Court, among other things:

- i. Find that the Court has personal jurisdiction over the Named Plaintiff and Participating Collective Members and that the Court has subject matter jurisdiction over the claims asserted in the Action to approve this Agreement;
- ii. Certify a collective of all Participating Collective Members for purposes of the Settlement;

- iii. Finally approve the Parties' settlement as fair, reasonable, adequate, and consistent and in compliance with the Fair Labor Standards Act and the Federal Rules of Civil Procedure, and binding on all Participating Collective Members;
- iv. Direct the parties and their counsel to implement and consummate this agreement according to the terms and provisions;
- v. Direct the Settlement Administrator to distribute Settlement Checks to the Named Plaintiff and Participating Collective Members as described in this Agreement;
- vi. Order the attorneys' fees and costs to be paid to Class Counsel;
- vii. Find that the Collective Settlement Notice, all other notices in the Agreement, and the notice methodology implement to this Agreement (1) constituted the best practicable notice, under the circumstances (2) constituted notice that was reasonably calculated to apprise Collective Members of the pendency of the Action, their right to opt in or not from the proposed settlement, and (3) was reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notice;
- viii. Find that Class Counsel and the Named Plaintiff adequately represented the Collective for purposes of entering into and implementing the settlement;
- ix. Order dismissal of the Action with prejudice to the Released Claims of Participating Collective Members and the Named Plaintiff subject only to an application for relief under Fed. R. Civ. P. 60(b)(1), or 60(d);

- x. Order entry of Final Approval Order and Judgment in accordance with this Agreement which incorporates the Releases set forth above in Section VII, make the Releases effective as of the date of the dismissal.
- xi. Retain jurisdiction as deemed appropriate by the Court.

XI. General Materials and Reservations

A. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter and it may not be altered or modified. The parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This agreement supersedes any prior agreement, understanding or undertaking (written or oral) by and between the Parties regarding the Subject Matter of this Agreement.

B. This Agreement and any amendments thereto shall be governed by and interpreted according to the laws of the State of Georgia.

C. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the Court in which this Action is pending.

D. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by the Agreement or any order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is

not one of the aforementioned days. As used in this Section, “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot’s Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

E. The parties reserve the right, subject, to the Court’s approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of the Agreement.

F. No opinion concerning the tax consequence of the proposed settlement to Participating Collective Members is given or will be given by Named Plaintiff, Class Counsel or Defendant’s Counsel, nor are any representations or warranties in this regard made by virtue of this Agreement. The Collective Notice shall direct Collective Members to consult with their own tax advisors regarding the tax consequences of the proposed settlement, including any payments, or credits provided hereunder, and any tax reporting obligations they may have with respect thereto. Each Participating Collective Members’ tax obligations, and the determination thereof, are the sole responsibility of the Collective Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Collective Member.

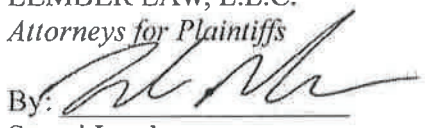
G. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

H. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

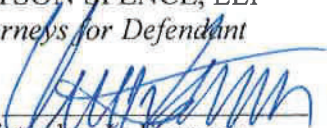
I. The Parties, their successors and assigns, and their counsel agree to cooperate fully with one another in seeking Court approval of this Settlement Agreement and to use their best efforts to effect the prompt consummation of this agreement and the proposed settlement.

J. This Agreement may be signed in counterparts, each of which shall constitute a duplicate original.

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