

Exhibit A

Settlement Agreement & Release

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK

VINCENT SETTECASI, PAMELA GRAHAM, and
 COREE SPENCER individually and on behalf of others
 similarly situated,

Plaintiffs,

- against -

GOTHAM HALL, LLC; GOTHAM HALL
 OPERATING ENTITY, LLC; CORE ZIEGFELD, LLC
 d/b/a ZIEGFELD BALLROOM, SIMON
 AUERBACHER, BRUCE A. KURTZ, and any other
 related entities,

Defendants.

Index No. 152791/2018

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between, on the one hand, Plaintiffs Vincent Settecasì, Pamela Graham, and Coree Spencer (“Named Plaintiffs”), individually and on behalf of a class of individuals they represent (the “Settlement Class,” as hereinafter defined) and, on the other, Defendants Gotham Hall, LLC; Gotham Hall Operating Entity, LLC; Core Ziegfeld, LLC, Simon Auerbacher, and Bruce A. Kurtz, and any other related entities (collectively “Defendants”) (together with Named Plaintiffs, individually each is a “Party,” collectively the “Parties”).

RECITALS AND BACKGROUND

A. **WHEREAS**, the above-referenced matter was commenced by the filing of a Class Action Complaint on March 29, 2018, which is now pending in the Supreme Court of the State of New York, County of New York, designated as Index No. 152791/2018 (the “Action”).

B. **WHEREAS**, Defendants have defended and intend to vigorously contest each and every claim in the Action and deny all material allegations of the Action, as to which Defendants allege numerous meritorious defenses. Defendants, without admitting any wrongdoing or liability on their behalf whatsoever, nevertheless have agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims that were asserted or could have been asserted in, or relate in any way whatsoever to, the Action against Defendants.

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

including the possibility that the Action, if not settled now, 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. Named Plaintiffs and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate and that this Agreement is in the best interest of Named Plaintiffs and the Settlement Class.

D. **WHEREAS**, Named Plaintiffs and Defendants, by and through their respective counsel, have engaged in significant and lengthy settlement discussions in connection with the resolution of the Action, including two separate mediations, the most recent being a virtual mediation session conducted by Mediator Martin F. Scheinman. Named Plaintiffs and Defendants – subject to the approval of the Court – have elected to settle the Action pursuant to the terms set forth in this Agreement, which shall be submitted to the Court for approval through the mechanisms set forth below.

NOW THEREFORE, in consideration of the covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the receipt and sufficiency of which is hereby acknowledged, the Parties, having been represented by counsel and intending to be legally bound, agree to a full and complete settlement of the Action.

(The foregoing “whereas” clauses are true and correct and incorporated by reference as part of this Agreement.)

1. DEFINITIONS

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

- 1.1 **Acceptance Period** means the sixty (60) day period beginning from the date of the first mailing of the Notice and Claim Form, during which a Class Member can submit a Claim Form to receive a Settlement Check.
- 1.2 **Approval Motion** means a Motion for Settlement Approval seeking court approval of this Agreement.
- 1.3 **Authorized Claimant** means each Class Member, or the authorized legal representative of such Class Member, who timely files a Claim Form in accordance with the terms of this Agreement, and who is therefore entitled to receive a Settlement Check. Each Named Plaintiff is deemed an Authorized Claimant upon execution of this Agreement and need not return a Claim Form.
- 1.4 **Claim Form** means the form, a copy of which is attached to the Notice of Settlement of Class Action Lawsuit, that a Class Member must sign and return during the Acceptance Period to become an Authorized Claimant.
- 1.5 **Class Counsel** means Jeffrey K. Brown, Michael A. Tompkins, and Brett R. Cohen of Leeds Brown Law, P.C., One Old Country Road, Suite 347, Carle Place, New York 11514.
- 1.6 **Class List** means a list in electronic format, preferably Excel, that includes (to the extent known to the parties) the names, last known addresses, social security numbers, last known

telephone numbers, last known email addresses, and/or information pertaining to time worked of each respective Class Member. The parties acknowledge that efforts have previously been made to obtain this information from various third parties and agree that they will utilize the list previously compiled by CPT Group.

- 1.7 Costs and Fees** means, collectively, Class Counsel's total attorney's fees, costs, and expenses; the costs and fees associated with the Settlement Claims Administrator; and, the Service Award.
- 1.8 Court** means the Supreme Court of the State New York, County of New York.
- 1.9 Days** means business days if the specified number is fewer than ten (10), and calendar days if the specified number is ten (10) or greater.
- 1.10 Defendants** means Gotham Hall, LLC; Gotham Hall Operating Entity, LLC; Core Ziegfeld, LLC, Simon Auerbacher, and Bruce A. Kurtz.
- 1.11 Defendants' Counsel** means Amanda M. Fugazy and Ilan Weiser of Ellenoff, Grossman & Schole, LLP, 1345 Avenue of the Americas, New York, New York 10105.
- 1.12 Taxes** means all taxes that will be deducted from each Individual Gross Amount, including: (i) any potential FICA, FUTA and SUTA obligations; and (ii) any and all taxes required to be withheld from an Authorized Claimant's compensation or other income.
- 1.13 Fairness Hearing** means any hearing scheduled at the Court's discretion in connection with the Approval Motion.
- 1.14 Final Effective Date** means, the later of: (i) 15 days following the expiration of the Notice Response Deadline; or (ii) if an appeal of the Approval Order is timely filed, the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Approval Order has been finally dismissed; (2) the Approval Order has been affirmed on appeal in a form substantially identical to the form of the Approval Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Approval Order has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Approval Order in a form substantially identical to the form of the Approval Order entered by the Court.
- 1.15 Final Settlement Amount** means the sum of the Net Settlement Fund, which shall be inclusive of any and all Taxes to be assessed on payments to Class Members, and all Court-approved Costs and Fees.
- 1.16 Gross Settlement Fund** means One Million Five Hundred Thousand Dollars (\$1,500,000.00), an amount to be used for allocation and calculation purposes that represents the maximum amount that Defendants could pay, which shall include any Taxes, for complete and final resolution of the Action.

- 1.17 Individual Gross Amount** means the amount allocated to each Authorized Claimant pursuant to Section 3.5(C) prior to any deduction for Taxes.
- 1.18 Individual Net Amount** means the amount paid to each Authorized Claimant after any deduction for Taxes pursuant to Section 3.1(C)(2).
- 1.19 Net Settlement Fund** means the aggregate balance to be allocated to all Authorized Claimants after the deduction of Costs and Fees and Taxes.
- 1.20 Notice** means the Court-approved Notice of Settlement of Class Action Lawsuit as authorized in the Approval Order.
- 1.21 Notice Response Deadline** means the last day of the Acceptance Period in which Class Members can timely complete and submit their Claim Form or opt-out of the settlement.
- 1.22 Objector** means an individual Authorized Claimant who timely and properly files an objection to this Agreement.
- 1.23 Opt-out Statement** means the written, signed statement that an individual Class Member submits indicating he or she has elected to exclude him or herself (“opt-out”) from the settlement.
- 1.24 Order Granting Approval (“Approval Order”)** means the Order entered by the Court: (i) certifying the Settlement Class; (ii) approving the terms and conditions of this Agreement; (iii) appointing Leeds Brown Law, P.C. as Class Counsel; (iv) directing the manner and timing of providing Notice to the Settlement Class; and (v) setting the dates and deadlines for effectuating the settlement, including date of the mailing of Notice, the Notice Response Deadline, and the date of the Fairness Hearing, if one is to be scheduled; among other things.
- 1.25 Qualified Settlement Fund (“QSF”)** means the account established and controlled by the Settlement Claims Administrator for the purposes of retaining and distributing the Final Settlement Amount in accordance with this Agreement. The QSF will be controlled by the Settlement Claims Administrator subject to the terms of this Agreement and the Approval Order.
- 1.26 Release** means the release of claims, as specified herein, to which the Parties bind themselves.
- 1.27 Releasees** means Gotham Hall, LLC, Gotham Hall Operating Entity, LLC, Core Ziegfeld, LLC, Core Z Operations, LLC, Gotham Hall Events, LLC, AppleCore Holdings LLC, and any of their respective parent corporations, affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns, their current and former employees, attorneys, fiduciaries, trustees, officers, owners, principals, shareholders, members, directors and agents thereof including but not limited to Simon Auerbacher, Bruce A. Kurtz, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries.

1.28 Released Class Claims means:

- (A) for all Authorized Claimants: any and all claims based on or arising under New York State law, including without limitation the New York Labor Law, the Hospitality Wage Order, and/or common law, whether known or unknown, for wages, gratuities, service charges, administrative charges, tips, unjust enrichment, breach of contract, interest on such claims, penalties, damages, liquidated damages, attorney's fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief, based on events that took place from the beginning of time through the Final Effective Date in connection with work performed at the Venues;
- (B) for all Class Members whose names appear on the Class List and who do not timely opt-out pursuant to this Agreement: any and all claims based on or arising under any cause of action pled in the Amended Complaint including, but not limited to, any claims for gratuities, service charges, administrative charges, tips, unpaid overtime compensation, breach of contract, unjust enrichment, or unlawful deductions, interest on such claims, penalties, damages, liquidated damages, attorney's fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief, based on events that took place from the beginning of time through the Final Effective Date in connection with work performed at the Venues; and
- (C) for all Class Members whose names do not appear on the Class List who do not timely opt-out pursuant to this Agreement: any and all claims based on or arising under New York Labor Law § 196-d, for gratuities, service charges, administrative charges, tips, interest on such claims, penalties, damages, liquidated damages, attorney's fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief, based on events that took place from the beginning of time through the Final Effective Date in connection with work performed at the Venues.

1.29 Reserve Fund means the fund whereby an amount is set aside within the QSF in case of error or omission to be paid and corrected via the mechanisms outlined in Section 3.1(B).

1.30 Service Award means the portion of the Final Settlement Amount, if any, requested by Named Plaintiffs and approved by the Court as a reasonable incentive award to Named Plaintiffs for representing the interests of the Settlement Class.

1.31 Settlement Checks means checks issued to Authorized Claimants for their Individual Gross Amount.

1.32 Settlement Class (individually, Class Member) means all individuals who performed work as servers, bartenders, or in related service positions for: Peter Callahan Catering, Olivier Cheng Catering, Hospitality Staffing, Neuman's Kitchen, Great Performances, Canard, Top Shelf, Creative Edge Parties, Creative Concepts, Newman and Leventhal Caterers, Restaurant Associates, Thomas Preti Events, Six Star Events, The Odyssey Group, Kensington Event Staffing, RME Group, Lawrence Scott Events, or any other company or employer during catered events held at the Venues between March 1, 2012 and the Final Effective Date.

1.33 Settlement Period means March 1, 2012 through the Final Effective Date.

1.34 Venues shall include the venue referred to as Gotham Hall, located at 1356 Broadway, New York, NY 10018 and the venue referred to as Ziegfeld Ballroom, located at 141 W 54th St, New York, NY 10019.

1.35 Void Date means 180 days after the mailing of Settlement Checks.

2. SETTLEMENT APPROVAL AND PROCEDURE

2.1 Settlement Class. Strictly for purposes of settling the Action, and without admitting any wrongdoing or liability, Defendants agree to class certification pursuant to CPLR §§ 901 and 902 to include all Class Members as defined in Section 1.31.

2.2 Settlement Claims Administrator.

- (A) **Retention.** Within fifteen (15) days after the filing of an Approval Motion as set forth in Section 2.3, the parties shall engage a third party to serve as the parties' qualified Settlement Claims Administrator ("SCA").
- (B) **Funding Settlement Claims Administrator.** The Settlement Claims Administrator shall be paid out of the QSF. Defendants shall make a deposit in accordance with 3.1(A)(1), and SCA shall be permitted to draw upon the same immediately upon such deposit. Thereafter, SCA shall be paid its remaining 50% for administration of the settlement from the Final Settlement Amount.
- (C) **Responsibilities of Settlement Claims Administrator.** The Settlement Claims Administrator shall be responsible for: (i) printing and disseminating to the Settlement Class the Notice and Claim Forms in accordance with the methods described in 2.4(B); (ii) performing a skip trace and resending, within one (1) day of receipt, any Notice and Claim Form returned without a forwarding address, or resending to those with a new forwarding address; (iii) responding to inquiries from the Parties; (iv) monitoring and maintaining a telephone number with telephone answerers until the Final Effective Date or the termination of this Agreement, whichever comes first; (v) receiving, retaining, and reviewing each Claim Form submitted by any Class Member; (vi) keeping track of requests for exclusion or objection, including maintaining the original envelope in which the request or objection was mailed; (vii) promptly furnishing to counsel for the Parties copies of any requests for exclusion, objections, or other written or electronic communications from each Class Member that the Settlement Claims Administrator receives; (viii) mailing Service Award Settlement Checks in accordance with this Agreement and the Approval Order; (ix) preparing, sending and/or wire-transferring Class Counsel's attorney's fees, expenses, and costs; (x) paying all Taxes, including issuing any applicable tax forms for all amounts paid from the Final Settlement Amount; (xi) responding to inquiries of Class Members regarding procedures for filing objections, Opt-out Statements, and Claim Forms; (xii) referring to Class Counsel all inquiries by Class Members or Authorized

Claimants regarding matters not within the Settlement Claim Administrator's duties specified herein; (xiii) responding to inquiries of counsel for the Parties relating to the Settlement Claims Administrator's duties specified herein; (xiv) promptly apprising counsel for the Parties of the activities of the Settlement Claims Administrator; (xv) maintaining adequate records of its activities, including the dates of the mailing of Notices and mailing and receipt of Claim Forms, returned mail, and any and all other actual or attempted written or electronic communications with the Settlement Class; (xvi) confirming in writing to counsel for the Parties and the Court its completion of the administration of the settlement; (xvii) timely responding to communications from the Parties and their counsel; (xviii) providing all information, documents, and calculations necessary to confirm the Final Settlement Amount; and (xix) such other tasks as the Parties mutually agree or as directed by the Court.

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

2.3 Approval Motion.

- (A) Within fifteen (15) days of complete execution of this Agreement, Class Counsel shall file an Approval Motion. In connection with the Approval Motion, Class Counsel will submit to the Court: (1) the proposed Notice, (2) the proposed Claim Form, (3) the proposed Approval Order, (4) an executed version of this Agreement, and (5) the necessary documents, memorandum, affidavits, and exhibits for the purposes of certifying a Class for settlement purposes under CPLR §§ 901 and 902, and approving the settlement. The Approval Motion also will seek the setting of a date for individuals to submit Claim Forms, Opt-out Statements and/or object to this Agreement. Counsel for Defendants shall have an opportunity to review and approve drafts of all documents submitted in connection with the Approval Motion for at least five (5) business days prior to their submission.
- (B) In the Approval Motion, Class Counsel shall inform the Court of the intended process to effectuate the settlement as contemplated herein, such that the Court may, among other things: (1) approve the settlement as fair, adequate, and reasonable; (2) incorporate the terms of the Release, as described herein; (3) dismiss the Action with prejudice; (4) award Costs and Fees, including any Service Award; and (5) authorize distribution and payment to the Authorized Claimants.
- (C) Class Counsel will file the Approval Motion as "unopposed" for settlement purposes only. Defendants will not oppose such application so long as it is consistent with the terms and conditions of this Agreement.

2.4 Notice and Claim Forms to Class Members.

- (A) **Class List.** Within ten (10) days of the filing of the Approval Motion, the parties shall provide the Settlement Claims Administrator with the Class List, as defined in Section 1.6.
- (B) **Notice.** The Notice will inform the Settlement Class about this settlement, and will also advise each Class Member of his or her rights, including their ability to object to, opt-out of, or participate in the settlement. Within five (5) days of the Settlement Claims Administrator's receipt of the Class List as defined in Section 2.4(A), or as otherwise ordered by the Court, the Settlement Claims Administrator shall:
- (1) For those Class Members for whom the Class List contains an email address, transmit notice via email.
 - (2) For those Class Members for whom the Class List does not contain an email address but contains a telephone number, transmit notice via text message.
 - (3) For those Class Members for whom the Class List lacks both an email address and telephone number, transmit notice via First Class Mail to the last known address.
 - (4) For any other Class Member for whom no information is available, notice shall be disseminated via:
 - (a) Newspaper campaign with a print ad to be run two (2) times per week in a AM New York Metro Newspaper for thirty (30) days after issuance of the Approval Order.
 - (b) Website to be hosted and maintained throughout duration of Acceptance Period.
- (C) **Skip Trace and Remailing.** If a Claim Form is returned as undeliverable, the Settlement Claims Administrator shall take all reasonable steps to obtain a current address, including one skip trace, and shall re-mail the Claim Form to such address. To the extent that Class Counsel is able to obtain better addresses for any Class Member, it shall provide such updated or most recent addresses to the Settlement Claims Administrator for mailing purposes. The Settlement Claims Administrator shall also mail or email a Notice and Claim Form to any Class Member who requests them after the initial mailing of Notice and before the Notice Response Deadline. The Settlement Claims Administrator will notify Class Counsel and Defendants' Counsel of any Notices and Claim Forms returned as undeliverable after the first mailing, including those returned as undeliverable after any subsequent mailing. All costs of locating Class Members will be paid from the QSF. To the extent that Class Counsel is able to obtain better addresses for any Class Member, Class Counsel may provide such to the Settlement Claims Administrator to be used for the purposes of mailing of Notice.
- (D) **Notice Response Deadline.** To be deemed an Authorized Claimant, a Class Member must postmark, email, or fax a signed Claim Form to the Settlement

Claims Administrator by the Notice Response Deadline, which shall be (i) sixty (60) days from the date of the initial mailing or as otherwise set by the Court, and (ii) an additional fifteen (15) days later for any Class Member who did not receive the Notice, or was unable to file a timely Claim Form, due to factors such as change of address, military service, hospitalization, or other extraordinary circumstances, which the Class Member shall have the burden to demonstrate. If an envelope does not contain a postmark, it shall be deemed received on the date that the Settlement Claims Administrator stamps the envelope or Claim Form as “received.”

2.5 Class Counsel’s Due Diligence. Throughout the litigation, during the course of discovery Defendants have made available and produced to Class Counsel representative documents from the Settlement Period. These documents included the key documents in the case, including customer contracts and other related materials. It is Defendants’ position that these documents properly disclosed the fact that the any mandatory charges in question were not paid as gratuities or tips as required by New York law and/or that, to the extent mandatory charges were not sufficiently explained, no reasonable customer would believe that such mandatory charges were charges that purported to be gratuities. Before, during and after mediation, the Parties discussed the validity of the alleged disclaimer and related defenses, and ultimately concluded that in light of such, the Settlement is fair, adequate and, reasonable, and is in the best interest of the Class Members.

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

- (A) Class Members who elect to opt-out of the settlement as set forth in this Agreement must mail, via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Claims Administrator that states he or she is opting out of the settlement (“Opt-out Statement”). In order to be valid, the Opt-out Statement must include the name, address, and telephone number of the Class Member, and a statement indicating his or her intention to affirmatively opt-out. To be effective, an Opt-out Statement must be postmarked by the United States Postal Service on or before the Notice Response Deadline.
- (B) A Class Member’s time to opt-out of the settlement (“Opt-out Period”) shall expire following the Notice Response Deadline.
- (C) The Settlement Claims Administrator shall stamp the received date on the original of each Opt-out Statement and send copies of each Opt-out Statement to Class Counsel and Defendants’ Counsel not later than three (3) days after receipt. The Settlement Claims Administrator shall also file with the Clerk of the Court stamped copies of any Opt-out Statements not later than three (3) days after receipt. The Settlement Claims Administrator will, within twenty-four (24) hours of the end of the Opt-out Period, send a final list of all Opt-out Statements to Class Counsel and Defendants’ Counsel by both email and overnight delivery. The Settlement Claims Administrator shall retain the stamped originals of all Opt-out Statements and originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Claims Administrator is relieved of its duties and responsibilities under this Agreement.

- (D) Any Class Member who does not timely submit an Opt-out Statement pursuant to this Agreement will be deemed to have accepted the settlement and the terms of this Agreement, will be bound by the Approval Order, and will have any Released Class Claims released and dismissed with prejudice. Only those Class Members who timely complete and return a Claim Form postmarked or received by the Settlement Claims Administrator by the Notice Response Deadline will be deemed an Authorized Claimant. Defendants shall have no obligation to pay or fund any amounts allocated to any Class Member who does not submit a timely Claim Form as set forth in this Agreement.

2.7 Objectors: Authorized Claimants who Object to the Settlement.

- (A) Class Members who wish to present objections to the settlement must first do so in writing and properly file a valid Claim Form by the Notice Response Deadline. To be deemed a valid objection, such statement must be mailed to the Settlement Claims Administrator via First Class Mail, postage pre-paid, and postmarked by the United States Postal Service on or before the Notice Response Deadline. The statement must include all reasons for the objection, and any supporting documentation. The statement must also include the name, address, email address, and telephone number of the Class Member making the objection. The Settlement Claims Administrator will stamp the date received on the original and send copies of each objection, supporting documents, as well as a copy of the Notice and Claim Form mailed to the Objector, to Class Counsel and Defendants' Counsel by email delivery no later than three (3) days after receipt of the objection. If the Objector requests in writing to appear at a hearing with the Court to state his or her objection, Class Counsel shall promptly file the date-stamped Objection with the Court and request such a hearing. It is in the Court's discretion whether to schedule a hearing and allow the Objector or Objector's counsel to appear and/or speak at the hearing. If the Court schedules such a hearing, Class Counsel shall notify the Objector via first class U.S. Mail of the date, time, and location of the hearing. The Parties may file with the Court written responses to any filed Objections no later than three (3) days before the hearing. Any reasons for the Objections not included in the written objection shall not be considered by the Court. Any Class Member who has timely elected to opt-out may not submit objections to the settlement.
- (B) An Objector may withdraw his or her objections at any time.

2.8 List and Calculations.

- (A) No later than thirty (30) days after the Notice Response Deadline, the Settlement Claims Administrator shall certify jointly to Class Counsel and Defendants' Counsel: (a) a list of all Authorized Claimants, (b) a list of all Objectors, and (c) a list of all Class Members who timely submitted an Opt-out Statement. Throughout the period of claims administration, the Settlement Claims Administrator shall provide reports to the Parties upon their request regarding (i) the status of the mailing of the Notices and Claim Forms to Class Members, (ii) the status or progress of the claims administration process, (iii) anticipated or expected

distribution of the Settlement Checks, and (iv) any other aspect of the claims administration process. Beginning the second Friday after Notice is mailed to Class Members, the Settlement Claims Administrator shall provide counsel for the Parties a weekly update on the number of Authorized Claimants, Objectors, and Opt-outs.

- (B) No earlier than twenty-one (21) days after the Notice Response Deadline, but not later than thirty (30) days after such time, the Settlement Claims Administrator shall provide notice by email to Class Counsel and Defendants' Counsel of the Final Settlement Amount, together with an Excel spreadsheet that designates each Authorized Claimant, his or her allocated share, and the appropriate totals and calculations to confirm the Final Settlement Amount and the estimated Employer Taxes ("Notice of Final Settlement Amount").

2.9 Default.

- (A) **Notice of Default.** If Defendants fail to make any payment as required pursuant to Section 3.1(A), then Class Counsel shall provide notice of such missed payment to Defendants' Counsel, via email, no earlier than five (5) days after such missed payment ("Notice of Default"). After receipt of the Notice of Default, Defendants shall have thirty (30) days to cure such default. If such default is not cured within thirty (30) of receipt of the Notice of Default ("Default"), then Class Counsel shall be permitted to request relief from the Court, including but not limited to attorneys' fees and costs associated with applying for such relief.
- (B) The Parties agree that the Court will have continuing jurisdiction over any breach of the Agreement, and that the party that successfully pursues an action for any breach of this Agreement shall be entitled to the reasonable costs, fees, and expenses of pursuing such action.

3. SETTLEMENT TERMS

3.1 Amount. Defendants agree to pay up to a maximum of One Million Five Hundred Thousand Dollars (\$1,500,000.00), inclusive of all Taxes, to fully resolve and satisfy any and all amounts to be paid to all Authorized Claimants and any Court-approved Costs and Fees.

- (A) **Funding the QSF.** Defendants shall fund the QSF in accordance with the following payment schedule, ultimately equal to the Final Settlement Amount:
- (1) First Payment – Within ten (10) days of the entry of the Approval Order, Defendants shall fund the QSF in the amount of \$50,000.
 - (2) Final Payment – Within ten (10) days following SCA providing the Notice of Final Settlement Amount, Defendants shall fund the QSF in an amount equal to the lesser of: (a) \$1,100,000 or (b) the remaining balance – to the extent there is any – to satisfy the Final Settlement Amount.

- (B) If the amount to be funded to satisfy the Final Settlement Amount exceeds the amounts paid by Defendants pursuant to Section 3.1(A), Defendants can, at their discretion, opt to cancel the Agreement. In the event they exercise such option, the parties will attempt to reconcile in good faith, with the aid of Mediator Scheinman, and reconciliation can, but will not necessarily, include a pro rata reduction of attorneys' fees and class allocations. For clarity, Defendants will not be required to fund any additional amounts towards the settlement unless they are willing to do so. In the event of a cancellation of the Agreement, no monies will be distributed, and the Action will be restored as if no Agreement had ever been entered into.
- (C) **Reserve Fund.** The Settlement Claims Administrator shall set aside Ten Thousand Dollars (\$10,000.00) of the amount funded in Section 3.1(A) to cover any errors, late claims, or omissions (e.g., individual Authorized Claimants who dispute the amounts allocated to them, or individuals who allege they should be part of the Class). The Settlement Claims Administrator may request an additional amount up to Twenty Thousand Dollars on an as-needed basis. Any Class Member or individual who wishes to challenge any error or omission shall provide a signed, sworn and notarized written statement to Class Counsel, the Settlement Claims Administrator, or Defendants' Counsel as to why such error or omission should be corrected, along with supporting documents, if available. Any Party or Settlement Claims Administrator who receives such a statement must provide a copy to all Parties and the Settlement Claims Administrator within five (5) days by email. Defendants' Counsel shall notify any challenging individual, along with Class Counsel, within thirty (30) days whether such error or omission will be corrected and paid from the Reserve Fund. If Defendants' Counsel fails to respond within thirty (30) days of receiving a signed, sworn and notarized written statement by any challenging individual, such error or omission will be deemed an error and thereby corrected by the Settlement Claims Administrator in a reasonable amount of time. To the extent the Parties are unable to agree on an error or omission, such error or omission may be submitted to a mutually agreed upon mediator who shall issue a binding decision on the issue. The Parties shall endeavor to resolve all errors and omissions within ninety (90) days from the final mailing of the Settlement Checks. Any monies remaining in the Reserve Fund ninety (90) days after the final mailing of the Settlement Checks, after the resolution of all errors and omissions, shall revert to Defendants.
- (D) **Deduction of Taxes.**
- (1) All applicable Taxes will be paid out of the QSF by the Settlement Claims Administrator. The Settlement Claims Administrator will make any and all proper tax withholdings, issue and file tax-related forms, and comply with all tax reporting obligations.
 - (2) The Settlement Claims Administrator shall calculate the appropriate and regular tax deductions from each Authorized Claimant's Individual Gross Amount (as calculated in accordance with Section 3.5), if any, to determine the Individual Net Amount. The Individual Net Amount will be the amount

reflected on the Settlement Checks. Any reduction reflected in the difference between the Individual Gross Amount and Individual Net Amount will not affect the Final Settlement Amount or the Net Settlement Amount.

- (3) The Settlement Claims Administrator shall calculate any Taxes for Authorized Claimants which would be owed by Defendants, which shall similarly be deducted from the QSF and Final Settlement Amount.
- (E) **Reversion.** Any monies other than the Reserve Fund and monies allocated for Authorized Claimants remaining in the QSF fifteen (15) days after mailing of Settlement Checks shall revert to Defendants thirty (30) days after the mailing of the Settlement Checks.

3.2 Payments from the QSF. At any point following the Final Effective Date, Class Counsel and Named Plaintiffs, may in their sole discretion, direct the distribution of any monies in the QSF, including by: (i) mailing all Settlement Checks to Authorized Claimants in an amount equal to their allocation, (ii) mailing any Service Award to Named Plaintiffs, (iii) mailing or wire-transferring payment to Class Counsel in the amount of Court-approved costs plus attorney's fees, and (iv) paying all Taxes to the appropriate government authorities due at such time. To avoid ambiguity, the QSF need not be fully funded for a partial distribution to occur.

3.3 Amounts Payable as Attorney's Fees, Costs, and Expenses.

- (A) In connection with the Motion for Approval, Class Counsel will petition the Court for a fee award from the QSF of no more than Five Hundred Thousand Dollars (\$500,000.00), which represents $\frac{1}{3}$ of the Gross Settlement Fund as and for attorney's fees, and up to Fifty Thousand Dollars (\$50,000.00) for costs and expenses actually incurred in connection with the Action. Defendants shall not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- (B) The substance of Class Counsel's application for attorney's fees, expenses and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The outcome of any proceeding related to Class Counsel's application for attorney's fees, expenses and costs shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Approval.

3.4 Service Award to Named Plaintiffs.

- (A) In return for services rendered to the Settlement Class, in the Motion for Approval, Named Plaintiffs may apply to the Court to receive a shared Service Award of

Twenty-Five Thousand Dollars (\$25,000.00), divided equally between the Named Plaintiffs.

- (B) The application for a Service Award is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The outcome of the Court's ruling on the application for a Service Award will not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Approval.

3.5 Allocation to Class Members.

- (A) **Basis.** All Class Members will have settlement amounts allocated to them based on the available records, the events they worked at, and/or other objective criteria established by the documents and testimony obtained during the Action:
- (B) **Methodology.**
- (1) Points will be available for *pro rata* allocation of the QSF, based upon the total reasonably estimated (i) number of events where Mandatory Charges were collected and (ii) number of shifts worked by Class Members at such events held at Gotham Hall and Ziegfeld Ballroom during the Settlement Period.
 - (2) For each event that a Class Member worked in a qualifying position eligible for gratuities (*ie.* servers, bartenders, or in related service positions which customarily receive gratuities, but not including maintenance workers, corporate officers, salespersons, cooks, food preparers, chefs, dishwashers, directors, clerical, office workers or any other person whose trade, classification or profession does not customarily receive gratuities), he or she shall receive 1 point. No partial points will be allocated.
 - (3) The ultimate allocation of settlement amounts shall be (1) agreed upon by the parties, and (2) approved by the Settlement Claims Administrator and Mediator Scheinman. Such calculations regarding the Settlement Class Members' proportionate shares of the Settlement Fund will be final and binding, subject to review for any miscalculations or other errors.
 - (4) **Percentage Allocation.** Each Class Member's percentage allocation shall be determined by (i) taking the number of points assigned to the Class Member and (ii) dividing it by the total number of points assigned to the entire Class.
- (C) **Amount Allocation.** The Gross Settlement Fund, less Costs and Fees shall be multiplied by each Authorized Claimant's percentage allocation as calculated in Section 3.5(B)(4). This represents the individual amount allocated to each Authorized Claimant – or Individual Gross Amount.

(D) **Modification.** The parties may, in their discretion, modify Section 3.5 as necessary so as to ensure the intent of the parties in reaching the instant Agreement is honored, including by instituting a tiered point system that would correspond to the hours worked or wages earned by each Class Member. Any disputes under this section shall be submitted to Mediator Scheinman for a binding determination.

3.6 Tax Characterization. Settlement Checks to Authorized Claimants shall be subject to applicable withholding taxes. All Costs and Fees will be considered 1099 non-wage income. All Costs and Fees, and Taxes shall be paid from the QSF.

4. RELEASE OF CLAIMS.

4.1 Upon the Final Effective Date, and except as to such rights or claims as may be created by this Agreement, each Class Member whose name appears on the Class List and who does not timely opt-out pursuant to this Agreement forever and fully releases and discharges Releasees, and their present, past, and future owners, affiliates, related business entities, parent companies, subsidiaries, predecessors, successors, assigns, divisions, directors, officers, trustees, members, employees, shareholders, representatives, insurers, business managers, accountants, attorneys, heirs, agents, executors, and administrators, in their individual and representative capacities, and all persons acting by, through, and under, or in concert with any of these, from all Released Class Claims during the Settlement Period as set forth in Section 1.27(B).

4.2 Upon the Final Effective Date, and except as to such rights or claims as may be created by this Agreement, each Class Member whose name does not appear on the Class List and who does not timely opt-out pursuant to this Agreement forever and fully releases and discharges Releasees, and their present, past, and future owners, affiliates, related business entities, parent companies, subsidiaries, predecessors, successors, assigns, divisions, directors, officers, trustees, members, employees, shareholders, representatives, insurers, business managers, accountants, attorneys, heirs, agents, executors, and administrators, in their individual and representative capacities, and all persons acting by, through, and under, or in concert with any of these, from all Released Class Claims during the Settlement Period as set forth in Section 1.27(C).

4.3 Upon the Final Effective Date, and except as to such rights or claims as may be created by this Agreement, each Authorized Claimant forever and fully releases and discharges Releasees from all Released Class Claims, as well as any and all wage and hour claims based on events that took place from the beginning of time through the date of the Approval Order, including any such claims relating to hours worked or wages received based on or under New York State law, and/or common law, whether known or unknown during the Settlement Period as set forth in Section 1.27(A).

4.4 Upon the Final Effective Date, and except as to such rights or claims as may be created by this Agreement, if the Court has approved the Service Awards set forth in Section 3.4, Named Plaintiffs forever and fully releases and discharges Defendants from all Released Class Claims as well as any and all other claims of any kind under federal, state, or local

law or common law based on events that took place from the beginning of time through the date of the Approval Order.

- 4.5 Except as provided in this Agreement, upon payment of all Costs and Fees as approved by the Court, Class Counsel, on behalf of the Authorized Claimants and Class Members, irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Defendants for attorney's fees, expenses, disbursements and all other costs and fees associated with Class Counsel's representation of the Class. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final and complete payment of all attorney's fees, expenses, disbursements and all other costs and fees associated with Class Counsel's representation in the Action.

5. INTERPRETATION AND ENFORCEMENT

- 5.1 **Non-Admission of Liability.** By Defendants entering into this Agreement, Defendants in no way admit any violation of law or any liability whatsoever to Named Plaintiffs and/or the Class Members, individually or collectively, all such liability being expressly denied. Rather, Defendants enter into this Agreement to avoid further protracted litigation and to fully and finally resolve and settle all disputes with Named Plaintiffs and Class Members on their behalf. Settlement of the Action, negotiation and execution of this Agreement, and all acts performed and documents executed pursuant to or in furtherance of this Agreement or the settlement: (1) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of Defendants, or any person acting on behalf of Defendants, or of the truth of any of the factual allegations in any and all complaints or other papers filed by Named Plaintiffs in the Action; and (2) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendants in any civil, criminal, administrative, or arbitral proceeding. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.
- 5.2 **Effect of Non-Approval.** In the event this Agreement is not approved by the Court on substantially the same terms as it was submitted for approval, or if an appellate court reverses and/or modifies the Approval Order, then the Parties shall first endeavor to resolve the matter jointly and in good faith, including jointly or individually seeking reconsideration of the Court's ruling if necessary or potentially involving a mutually agreed mediator. If such efforts to do not result in a new agreement between the Parties, then the Parties will resume litigation of the Action as of the date of this Agreement with all rights and defenses intact as if no agreement had occurred, including, but not limited to, revocation of the certification of the Settlement Class.
- 5.3 **Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such other and further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.

- 5.4 No Assignment.** Class Counsel and Named Plaintiffs, on behalf of the individual Class Members, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Action, or any related action.
- 5.5 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 5.6 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Named Plaintiffs and all Class Members, their families, representatives, heirs, administrators, executors, beneficiaries, conservators, insurers, attorneys, and assigns. Notwithstanding the passage of any legislation, bill, regulation, or other change in the law that may materially affect the rights of Named Plaintiffs and all Class Members in the Action, this Agreement is binding.
- 5.7 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 5.8 Captions.** The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 5.9 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles.
- 5.10 Continuing Jurisdiction.** The Parties shall request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby. The Parties may not unilaterally petition the Court to modify this Agreement except to the extent provided in this Agreement.
- 5.11 Waivers, etc. to Be in Writing.** No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject to any required Court approval. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

- 5.12 When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 5.13 Facsimile and Email Signatures.** Any Party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile or email to counsel for the other Party. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.
- 5.14 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

[INTENTIONALLY LEFT BLANK – SIGNATURE BLOCK ON FOLLOWING PAGE]

WE AGREE TO THESE TERMS,
GOTHAM HALL, LLC, Defendant

By: [Signature]

Title: Manager

Dated: September 29, 2023

GOTHAM HALL OPERATING
ENTITY, LLC, Defendant

By: [Signature]

Title: Manager

Dated: September 29, 2023

CORE ZIEGFELD, LLC, Defendant

By: [Signature]

Title: Manager

Dated: September 29, 2023

Simon Auerbacher, Defendant

Simon Auerbacher

Dated: September 29, 2023

Bruce A. Kurtz, Defendant

[Signature]

Dated: September 29, 2023

Vincent Settecasi, Plaintiff

[Signature]
Vincent Settecasi (Sep 26, 2023 17:20 EDT)

Dated: Sep 26, 2023

Pamela Graham, Plaintiff

Pamela Graham
Pamela Graham (Sep 27, 2023 16:28 EDT)

Dated: Sep 27, 2023

Coree Spencer, Plaintiff

Coree Spencer
Coree Spencer (Sep 27, 2023 10:38 EDT)

Dated: Sep 27, 2023