

# Exhibit A

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**DEANNA CAROLLO and DIANA J. OWENS,  
on behalf of themselves and all other employees  
similarly situated,**

**16 CV 00013 (DNH) (TWD)**

**Plaintiffs,**

**-against-**

**UNITED CAPITAL CORP., AFP MANAGEMENT  
CORP., and AFP 101 CORP.,**

**Defendants.**

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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release is entered into by and between, on the one hand, Plaintiffs Deanna Carollo and Diana J. Owens, on the other hand, Defendants United Capital Corp., AFP Management Corp., and AFP 101 Corp.

**1. RECITALS AND BACKGROUND**

WHEREAS, on January 5, 2016, Deanna Carollo and Diana J. Owens filed a putative Class and Collective Action Complaint in the United States District Court for the Northern District of New York (the “Court”) bearing the Civil Action Number 16-cv-00013, seeking damages and other relief due to alleged violations of the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”) on the part of Defendants;

WHEREAS, in May 2017, Plaintiffs filed a motion for conditional certification and notice pursuant to the Fair Labor Standards Act;

WHEREAS, in May 2017, Plaintiffs also filed a motion for Rule 23 class certification;

WHEREAS, on March 24, 2021, the Court granted Plaintiffs’ motion for certification of a FLSA collective of “all hourly banquet and restaurant service workers employed at the Radisson Hotel-Utica Centre at any time from January 5, 2013 through March 24, 2021 on Plaintiff’s claims under counts: (i) unpaid minimum wages; and (ii) unpaid overtime wages (Docket No. 87);

WHEREAS, on March 24, 2021, the Court also granted Rule 23 certification for the claims for unlawful retention of gratuities, unpaid minimum wages and wage notice violations on behalf of a class defined as the following:

all hourly workers employees of the Radisson Hotel-Utica Centre at any time from April 9, 2011 through March 24, 2021 and all banquet and restaurant service workers who worked for the Radisson Hotel-Utica Centre at any time from January 5, 2010 through March 24, 2021;

WHEREAS, the Parties completed fact discovery in this matter and were set to begin expert discovery and then dispositive motion practice;

WHEREAS, on August 1, 2022 and again on February 15, 2023, the Parties participated in mediation sessions which were conducted by Martin F. Scheinman, a highly-regarded, experienced mediator who has successfully negotiated settlements in similar class and collective actions involving wage and hour claims against other New York hospitality employers;

WHEREAS, Defendants have denied and continue to deny all of the material allegations made by Named Plaintiffs in the Action and have denied and continue to deny that they are liable or owe damages to anyone with respect to the allegations or causes of action asserted in the Action. Nonetheless, solely for the purpose of resolving this Action, and without admitting any fault, wrongdoing, or liability, Defendants have agreed to disseminate a Notice of Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure to all Class Members;

WHEREAS, the purpose of this Agreement is to settle fully and finally all Class Member claims in the Complaint; and

WHEREAS, Named Plaintiffs and Class Counsel have evaluated the merits of the claims and the impact of this Agreement on Named Plaintiffs and Class Members. Based upon Named Plaintiffs' and Class Counsel's evaluation of a number of factors and recognition of the substantial risks of continued litigation, including the possibility that the Action, if not settled now, might not result in any recovery, might result in a recovery that is less favorable than this settlement, and/or might result in a recovery that cannot be obtained 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 interests of Named Plaintiffs and Class Members.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided in this Agreement, the Parties agree to a full and complete settlement of the Action in accordance with the following terms and conditions:

## **2. DEFINITIONS**

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

**2.1 “Action” or “Litigation.”** The terms “Action” and “Litigation” refer to the lawsuit filed by Named Plaintiffs in the United States District Court for the Northern District of New York styled Carollo et al. v. United Capital Corp., No. 16-cv-00013 (DNH)(TWD).

- 2.2 “Administrator” or “Claims Administrator.”** The terms “Administrator” and “Claims Administrator” refers to the administrator engaged by Defendants, with the consent of Plaintiffs, as to the administration of the Settlement, including the mailing of Notices of Settlement.
- 2.3 “Agreement.”** The term “Agreement” or “Settlement” means this Settlement Agreement and Release.
- 2.4 “Authorized Claimant.”** “Authorized Claimant” means a Class Member, or authorized legal representative of such Class Member, who timely files a Claim Form in accordance with the terms of this Agreement, and who is entitled to receive a Settlement Check related to the Settlement.
- 2.5 “Claim Form.”** The term “Claim Form” refers to the form which will be included in the Notice of Settlement (Exhibit 1) sent to all Class Members and which a Class Member must timely execute and submit to the Claims Administrator consistent with the Settlement in order to receive his or her Settlement Checks, unless such Class Member is a Named Plaintiff, in which case such Class Member need not submit a Claim Form to participate.
- 2.6 “Banquet Class” or “Banquet Class Member(s).”** The terms “Banquet Class” and “Banquet Class Member(s)” refers to hourly banquet employees, including but not limited to, job titles such as banquet servers, bartenders, and captains, who worked at the Hotel during the period of time between January 5, 2010 through March 24, 2021. For the avoidance of any doubt, an individual is only a Banquet Class Member if such person has a period of time in which he or she worked as an hourly banquet employee during the Banquet Class Relevant Time Period according to Defendants’ records. Any member of the Banquet Class is automatically also part of the Hourly Employee Class and can also qualify to be in the Restaurant Class.
- 2.7 “Banquet Class Member Individual Settlement Amounts.”** The term “Banquet Class Member Individual Settlement Amounts” refers to each Banquet Class Member’s individual allocated share of the Banquet Class Net Settlement Fund in the manner set forth in Paragraph 10.2.
- 2.8 “Banquet Class Relevant Time Period.”** “Banquet Class Relevant Time Period” refers to the period of time for the Banquet Class between January 5, 2010 through the full execution date of this Agreement.
- 2.9 “Banquet Class Net Settlement Fund.”** “Banquet Class Net Settlement Fund” means the portion of the Net Settlement Fund to be allocated to the Banquet Class Members. The Banquet Net Settlement Fund shall be 63.7814% of the Net Settlement Fund.
- 2.10 “Class Counsel.”** The term “Class Counsel” refers to Thomas & Solomon LLP and Black & Buffone PLLC.

- 2.11 “Class Member.”** The term “Class Member” refers collectively to the members of the Banquet Class, Restaurant Class, and Hourly Employee Class.
- 2.12 “Class Member Lists.”** The term “Class Member Lists” refers to the lists of all Class Members in the Banquet Class, Restaurant Class, and Hourly Employee Class that contain: (i) names; (ii) last known addresses, phone numbers and email addresses (if known and to the extent that such records exist); (iii) job positions; (iv) gross wage earnings during the Banquet Class and Restaurant Class relevant time periods for the Banquet Class and Restaurant Class;; and (v) Social Security Numbers, contained in a confidential document that Defendants shall provide to Class Counsel and the Claims Administrator. The Class Member Lists are to be used by Class Counsel and the Claims Administrator to effectuate the Settlement; it may not be copied, disseminated, or used for any other purpose.
- 2.13 “Court.”** The term “Court” refers to the United States District Court for the Northern District of New York, the Honorable David N. Hurd presiding.
- 2.14 “Days.”** The term “days” refers to calendar days, unless otherwise specified.
- 2.15 “Defendants.”** The term “Defendants” refers to United Capital Corp., AFP Management Corp., and AFP 101 Corp.
- 2.16 “Defense Counsel.”** The term “Defense Counsel” refers to Milman Labuda Law Group PLLC and in particular Robert Milman, Esq. and Jamie Felsen, Esq.
- 2.17 “Enhancement Awards.”** The term “Enhancement Awards” shall mean separate payments made to certain specified Named Plaintiffs in recognition of their services rendered to the Class Members.
- 2.18 “Fairness Hearing.”** The term “Fairness Hearing” refers to the anticipated hearing before the Court relating to the motion for final approval of this Agreement, unless otherwise scheduled by the Court without the filing of a motion.
- 2.19 “Final Effective Date.”** The term “Final Effective Date” refers to the date that is thirty (30) days after the Court has entered a Final Order and Judgment of Dismissal with Prejudice approving this Agreement, provided that a Class Member timely filed an Objection and thus has standing to appeal and the time to appeal the Final Order and Judgment of Dismissal with Prejudice has expired and no notice of appeal has been filed. However, in the event that a notice of appeal is filed by an individual who timely filed an Objection, the Final Effective Date shall be the day after the date of the following event that occurs last, whichever is later: (1) any appeal from the Final Order and Judgment of Dismissal with Prejudice has been finally dismissed; (2) the Final Order and Judgment of Dismissal with Prejudice has been affirmed on appeal in a form substantially identical to the form of the Final Order and Judgment of Dismissal with Prejudice entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Order and Judgment of Dismissal with Prejudice 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 Final Order and Judgment of Dismissal with Prejudice in a form substantially identical to the form of the Final Order and Judgment of Dismissal with Prejudice entered by the Court.

- 2.20 “Final Order and Judgment of Dismissal with Prejudice.”** The term “Final Order and Judgment of Dismissal with Prejudice” refers to the order entered by the Court after the Fairness Hearing approving the terms and conditions of this Agreement, including payment of Enhancement Awards, Settlement Expenses, awards attorneys’ fees and costs, and dismissing the Action with prejudice.
- 2.21 “Hotel.”** The term “Hotel” refers to the hotel formerly known as the Radisson Hotel Utica Centre Hotel which is now known as the Delta Hotels by Marriott Utica.
- 2.22 “Hourly Employee Class.”** The term “Hourly Employee Class” refers to all hourly employees who worked at the Hotel during the period of time between April 9, 2011 through March 24, 2021. For the avoidance of any doubt, an individual is only an Hourly Employee Class Member if such person has a period of time in which he or she worked as an hourly employee during the Hourly Employee Relevant Time Period according to Defendants’ records.
- 2.23 “Hourly Employee Relevant Time Period.”** The “Hourly Employee Relevant Time Period” is April 9, 2011 through the date of full execution of this Agreement.
- 2.24 “Hourly Employee Class Member Individual Settlement Amounts.”** The term “Hourly Employee Class Member Individual Settlement Amounts” refers to each Hourly Employee Class Member’s individual allocated share of Hourly Employee Class Net Settlement Fund in the manner set forth in Paragraph 10.2.
- 2.25 “Hourly Employee Class Net Settlement Fund.”** “Hourly Employee Class Net Settlement Fund” means the portion of the Net Settlement Fund to be allocated to the Hourly Employee Class. The Hourly Employee Class Net Settlement Fund shall be 25.1544% of the Net Settlement Fund.
- 2.26 “Named Plaintiffs.”** The term “Named Plaintiffs” refers to Deanna Carollo and Diana Owens. For avoidance of doubt, Named Plaintiffs are also Class Members.
- 2.27 “Net Settlement Fund.”** The term “Net Settlement Fund” refers to the remainder in the Qualified Settlement Fund after deductions for: (1) Claims Administrator’s fees and costs; (2) Court approved attorneys’ fees and costs for Class Counsel; and (3) Court approved Enhancement Awards. The Net Settlement Fund shall be apportioned between the Banquet Net Settlement Fund, the Restaurant Class Net Settlement Fund, and the Hourly Employee Net Settlement Fund as set forth in the Agreement.

- 2.28 “Notice Deadline.”** The term “Notice Deadline” refers to the last day by which Class Members may submit a Claim Form, Objection and/or Opt-Out Statement. Class Members may use any method identified on the Notice, including email, fax, or mail. If sent via mail, it must be postmarked on or before the Notice deadline.
- 2.29 “Notice of Settlement” or “Notice.”** The term “Notice of Settlement” or “Notice” refers to the Court-approved Notice of Proposed Settlement and Fairness Hearing, as well as the Claim Form and pre-paid self-addressed envelope, which provides Class Members with notice of the opportunity to participate in, opt-out of and/or object to the proposed settlement.
- 2.30 “Notice Period.”** The term “Notice Period” refers to the forty-five (45) day period after the initial mailing of the Notice of Settlement by the Claims Administrator in which Class Members may submit to the Claims Administrator: (i) a Claim Form; (ii) Objection; and/or (iii) Opt-Out Statement.
- 2.31 “Objection.”** The term “Objection” refers to any Class Member who wishes to object to the Settlement and timely submits a signed, written objection to the Claims Administrator. Written Objections should be consistent with the requirements set forth in Section 7 of the Agreement.
- 2.32 “Objector.”** The term “Objector” refers to any Class Member who timely files an Objection to this Agreement; the term does not include any individual who opts-out of the settlement.
- 2.33 “Opt-Out Statement.”** The term “Opt-Out Statement” refers to any Class Member who wishes to be excluded from the Settlement and timely submits a signed, written Opt-Out Statement to the Claims Administrator. Written Opt-Out Statements should be consistent with the requirements set forth in Section 6 of the Agreement.
- 2.34 “Parties.”** The term “Parties” refers collectively to Plaintiffs, Defendants, and Class Members.
- 2.34 “Preliminary Approval Motion.”** The term “Preliminary Approval Motion” refers to Named Plaintiffs’ anticipated motion, and all supporting papers, filed with the Court requesting preliminary approval of the class action settlement, including entry of the Preliminary Approval Order, approval of the proposed Notice and Claim Form to Class Members. The Preliminary Approval Motion shall request class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure for settlement purposes.
- 2.35 “Preliminary Approval Order.”** The term “Preliminary Approval Order” refers to the Order entered by the Court: (i) approving the terms and conditions of the Settlement; (ii) approving the Notice of Settlement and Claim Forms; and (iii) directing the manner and timing of the publishing of the Notice of Settlement to the Class.

- 2.36 “Qualified Settlement Fund.”** “Qualified Settlement Fund” or “QSF” means the account established by the Claims Administrator for funding of the Settlement paid by Defendants as set forth in Paragraph 10.1. The Qualified Settlement Fund shall be controlled by the Claims Administrator subject to the terms of this Agreement.
- 2.38 “Released Claims.”** Released Claims” means, for all Class Members any and all claims, debts, losses, demands, obligations, liabilities, causes of action, charges, grievances, complaints, or suits of any kind that relate to his or her compensation or any wage and hour violations that may have occurred during, arising from, or relating to each Class Member’s employment at the Hotel under federal, state, and/or local law from January 5, 2010 through date of full execution of this Agreement for the Restaurant and Banquet Classes and April 9, 2011 through date of full execution of this Agreement for the Hourly Employee Class, including, but not limited to, any and all claims for unpaid wages, overtime compensation, gratuities, tips, tip credits, tip allowances, service charges, administrative charges, operational charges, other mandatory charges, commissions, improper deductions, travel time, bonuses, penalties, spread-of-hours pay, meal breaks, meal credits, uniform maintenance, uniform reimbursement, expense reimbursement, failure to maintain and furnish employees with proper wage notices and statements, other compensation, wages or benefits, including, but not limited to, life insurance, accidental death and disability insurance, sick leave, other employer-provided plans or programs, distributions of income or profit, vacation or other leave time, retirement benefits, pension benefits, and any other claims that were or could have been asserted in the Litigation, whether known or unknown, under federal, state, and/or local wage and hour laws (including, but not limited to, the Fair Labor Standards Act, New York Labor Law, New York Code of Rules and Regulations, New York Hospitality Industry Wage Order, New York Restaurant Industry Wage Order, New York Minimum Wage Order for Miscellaneous Industries and Occupations, and New York Wage Theft Prevention Act). This release includes all claims for relief relating to any such released claims, including claims for liquidated damages, punitive damages, penalties, interest, and attorneys’ fees, costs, and expenses outside of those provided for under this Agreement. Nothing contained in the release set forth in this Paragraph, however, shall preclude any Class Member from pursuing any claims for unemployment insurance benefits or workers’ compensation benefits; however, the Named Plaintiffs affirm that they are unaware of any workplace injury that they suffered. Moreover, Plaintiffs acknowledge that they were not members of any employee benefit plan during their employment with Defendants.
- 2.39 “Releasees.”** Defendants, Defendants’ present, former, and future parents, subsidiaries, affiliates, and related entities, including each of their respective present and former shareholders, members, owners, officers, investors, directors, employees, managers, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, representatives, successors, and assigns, as well as any persons or entities acting in concert with any of them and any individual or entity that could be jointly liable with any of them.



- 2.40 “Releasing Persons.”** “Releasing Persons” means each and every Class Member who does not timely submit a valid Opt-Out Statement to the Claims Administrator (regardless of whether such Class Member submits a Claim Form or redeems a Settlement Check).
- 2.41 “Restaurant Class Relevant Time Period.”** The term “Restaurant Class Relevant Time Period” refers to the period of time for the Restaurant Class between January 5, 2010 through the date of the full execution of this Agreement.
- 2.42 “Restaurant Class” or “Restaurant Class Member(s).”** The terms “Restaurant Class” and “Restaurant Class Member(s)” refers to tipped restaurant employees who worked at the restaurant located in the Hotel during the Restaurant Class Relevant Time Period. For the avoidance of any doubt, an individual is only a Restaurant Class Member if such person has a period of time in which he or she worked as a tipped restaurant employee during the period of time between January 5, 2010 through March 24, 2021 according to Defendants’ records. Any member of the Restaurant Class is automatically also part of the Hourly Employee Class and can also qualify to be in the Banquet Class.
- 2.43 “Restaurant Class Member Individual Settlement Amounts.”** The term “Restaurant Class Member Individual Settlement Amounts” refers to each Restaurant Class Member’s individual allocated share of the Restaurant Class Net Settlement Fund in the manner set forth in Paragraph 10.2.
- 2.44 “Restaurant Class Net Settlement Fund.”** The term “Restaurant Class Net Settlement Fund” means the portion of the Net Settlement Fund to be allocated to the Restaurant Class Members. The Restaurant Net Settlement Fund shall be 11.0642% of the Net Settlement Fund.
- 2.45 “Settlement Expenses.”** The term “Settlement Expenses” means the reasonable fees, costs and expenses incurred by the Claims Administrator in performing the services authorized in the Settlement Agreement. Settlement Expenses are to be paid from the Total Settlement Amount.
- 2.46 “Settlement Checks.”** The term “Settlement Checks” refers to the checks issued to Class Members from the Settlement Account by the Administrator as calculated by the Administrator in accordance with the terms of this Agreement.
- 2.47 “Settlement Notices.”** “Settlement Notice” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit, attached as Exhibit 1 to this Agreement.
- 2.48 “Total Settlement Amount.”** The term “Total Settlement Account” refers to one-million eight hundred thousand dollars (\$1,800,000) which is the sum total of all potential payments United Capital Corp., AFP Management Corp., and AFP 101 Corp. will make pursuant to this Agreement (excluding any required employer payroll taxes due) and includes Enhancement Awards, Settlement Expenses, any

payments available to Class Members, and the requested number of attorneys' fees and costs. Any funding required by Defendants will be put into a Qualified Settlement Fund.

**3. PRELIMINARY APPROVAL ORDER**

- 3.1** Within seven (7) days of execution of this Agreement by all Parties, Class Members will submit to the Court an unopposed Motion for Preliminary Approval of the Settlement. The Preliminary Approval Motion will seek the setting of deadlines for Class Members to submit Claim Forms, Opt-Out Statements and Objections, which date will be forty-five (45) days from the mailing of the Notice of Settlement to the Class Members, and a date for the Final Fairness Hearing which shall be requested to be scheduled no earlier than eighty-five (85) days (and no later than 100 days) after the Preliminary Approval Order. Class Counsel shall provide Defendants a draft of the Preliminary Approval Motion and proposed Order at least four (4) days in advance of filing and Defendants' Counsel shall provide any commentary by no later than two (2) days in advance of filing.
- 3.2** The Parties will work together diligently and in good faith to expeditiously obtain a Preliminary Approval Order. Any disputes that may arise between the Parties related to the Parties' efforts to obtain a Preliminary Approval Order shall be submitted to Martin Scheinman who agreed to retain jurisdiction over such disputes.

**4. INITIAL PROCEDURAL ISSUES**

- 4.1 Binding Agreement.** If approved by the Court, this Agreement is a binding agreement and contains all material agreed-upon terms.
- 4.2 Retention of the Claims Administrator.** Defendants shall engage an Administrator (with Plaintiffs' consent) to mail the Notices and administer the Settlement.
- 4.3 Duties of the Claims Administrator.** The Administrator will be responsible for:
- A.** Preparing, printing, running each Class Member's name through the National Change of Address Program, and disseminating the Notice of Settlement and Claim Forms to Class Members by no later than ten (10) days after a Preliminary Approval Order has been issued from the Court;
  - B.** For any Notice of Settlement that is returned with a forwarding address, the Claims Administrator shall re-mail the Notice of Settlement to the forwarding address. For any Notice of Settlement that is returned with a forwarding address within ten (10) days of the Notice Deadline, the Claims Administrator shall use reasonable efforts to attempt to find a new address using the Class Member's Social Security Number, and if a new address is found, to mail the Notice of Settlement to the new address;

- C.** Copying counsel for all Parties on material correspondence and promptly notifying counsel for all Parties of any material requests or communications made by any Party;
- D.** Promptly furnishing to counsel for all Parties copies of any Opt-Out Statements, Objections, or other written or electronic communications from Class Members that the Claims Administrator receives;
- E.** Keeping track of Opt-Out Statements, including maintaining the original mailing envelopes in which the requests were mailed;
- F.** Receiving, retaining and reviewing the Claim Forms submitted by Authorized Claimants;
- G.** Responding to inquiries from Class Counsel and Defense Counsel consistent with the Administrator's duties as specified herein;
- H.** Setting up the Qualified Settlement Fund to distribute all Settlement Checks to Authorized Claimants, the payment to Class Counsel, the Claims Administrator, and the Enhancement Awards to the Named Plaintiffs;
- I.** Calculating the proportionate share of the Net Settlement Fund to Class Members;
- J.** Providing weekly statistics to Class Counsel and Defendant's Counsel regarding the number of Notices of Settlement mailed, as well as number of Claim Forms, Objections and Opt-Out Statements have been submitted;
- K.** Calculating the amount of each Authorized Claimant's Settlement Check;
- L.** Calculating all appropriate taxes, including payroll taxes, paying all appropriate taxes, preparing and mailing appropriate tax forms, including IRS Form W-4, IRS Form W-2 and IRS Form 1099 and all amounts paid to Authorized Claimants, and comply with all tax reporting obligations, including preparing and filing all applicable tax forms;
- M.** Issuing and mailing Settlement Checks to Settlement Class Members, issuing and mailing the Enhancement Awards to the Named Plaintiffs, and wiring the Court approved Class Counsel's fees and costs;
- N.** Toll-free telephone line where Class Members may hear response to frequently asked questions where there is an ability to speak to a live person to update contact information and request new copies of the Claim Form or Settlement Notice;

- O.** Timely responding to all inquiries from Class Members regarding the Settlement;
- P.** For any Settlement Check that is returned with a forwarding address, the Claims Administrator shall re-mail the Settlement Check to the forwarding address. For any Settlement Check that is returned without a forwarding address, the Claims Administrator shall use reasonable efforts to attempt to find a new address using the Authorized Claimant's Social Security Number, and if a new address is found, to mail the Settlement Check to the new address;
- Q.** Referring to Class Counsel all Class Members' inquiries regarding matters not within the Administrator's duties specified herein;
- R.** Providing a weekly update to Class Counsel and Defendant's Counsel with statistics on the number of individuals who have signed and cashed Settlement Checks;
- S.** Promptly apprising Class Counsel and Defense Counsel of the activities of the Administrator;
- T.** The Administrator also shall provide Class Counsel and Defense Counsel with an updated address list for all Class Members following the Notice Period;
- U.** Maintaining adequate records of its activities, including the dates that each Notice was mailed, that any returned mail was received, and that any other communications and/or attempted communications with Class Members occurred;
- V.** No later than ten (10) days prior to the Fairness Hearing, the Administrator shall certify jointly to Class Counsel and to Defense Counsel: (a) a list of all Class Members for each of the three classes; (b) a list of all Class Members for each of the three classes who filed timely objections; and (c) a list of all Class Members for each of the three classes who timely requested to opt-out of the Settlement. The Administrator will update as appropriate again one (1) day prior to the Fairness Hearing;
- W.** Preparing declarations describing all duties performed and claims administration statistics, including preparing a declaration for Final Approval of the Settlement;
- X.** Confirming in writing to Class Counsel and Defense Counsel its completion of the administration of the Settlement;
- Y.** Timely responding to communications from the Parties or their counsel;

- Z.** Setting up and maintaining a settlement website (which will be maintained through the check cashing period) which will identify all deadlines for Class Members; include a copy of the Notice of Settlement and Claim Form, as well as a copy of the Settlement Agreement, the Motion for Preliminary Approval of the Settlement, Motion for Final Approval of Settlement, and Motion for Attorneys' Fees and Enhancement Awards; and identify the time and date of the Final Fairness Hearing; and
- AA.** Any other tasks upon which the Parties mutually agree.

## **5. THE NOTICE OF SETTLEMENT**

- 5.1** Within seven (7) days of the Court's entry of the Preliminary Approval Order, Defense Counsel will provide Class Counsel and the Administrator with the Class Member Lists in Microsoft Excel format.
- 5.2** Within eighteen (18) days of the entry of the Preliminary Approval Order, the Claims Administrator shall mail to all Class Members, via First Class United States Mail, postage prepaid, the Court-approved Notice and Claim Form. The Notice of Settlement including Claim Form, Exhibit 1, informs Class Members about the terms of this Agreement, the class or classes they are identified as according to Defendants' records, and advise them of the opportunity to participate in the Settlement, submit a Claim Form, object to the Settlement, or opt-out of the Settlement. Class Members who are no longer employed with Defendants and who have been identified as part of the Restaurant and/or Banquet Classes according to Defendants' records, the Claims Administrator will mail, along with the Notice of Settlement a blank IRS Form W-4, to be completed and returned to the Claims Administrator; and any such Authorized Claimant who fails to provide the Claims Administrator with a W-4 Form shall be deemed to have elected zero withholdings exemptions.
- 5.3** If a Notice and Claim Form is returned to the Claims Administrator by the Post Office with a forwarding address within thirty-eight (38) days after the initial mailing date, the Claims Administrator shall re-mail the Notice, Claim Form and W-4 Form when applicable to a forwarding address. If a Notice and Claim Form is returned to the Claims Administrator without a forwarding address within thirty-eight (38) days from the initial mailing date, the Claims Administrator shall use reasonable efforts to attempt to find a new address using the Class Member's Social Security Number, and if a new address is found, to mail a Notice and Claim form to the new address.
- 5.4** Class Members who timely return their Claim Form by the Notice Deadline will be deemed Authorized Claimants. To be effective for purposes of becoming an Authorized Claimant, a Claim Form must be signed and postmarked, emailed or faxed to the Claims Administrator on or before the Notice Deadline. To the extent the envelope does not contain a postmark, five days prior to the date that the Claims Administrator stamps the envelope "received" shall apply.

**5.5** Upon receipt of an unsigned, but otherwise timely, Claim Form, the Claims Administrator shall promptly by mail apprise the Class Member who returned the Claim Form of its deficiency and provide such Class Member with a substitute form that may be used to cure the deficiency within ten (10) days. A Claim Form that remains unsigned eleven (11) days after a deficiency letter has been mailed by the Claims Administrator shall be void and will have been deemed to release their claims as set forth in the Agreement.

**6. OPT-OUTS**

**6.1** A Class Member may opt out of the Settlement by submitting an Opt-Out Statement to the Claims Administrator as set forth in the Notice. Class Members must ultimately submit their Opt-Out Statement by no later than the Notice Deadline. Class Members may use any method identified on the Notice, including email, fax or mail. If sent via mail, it must be postmarked on or before the Notice Deadline. The Opt-Out Statement must set forth the following:

- (a) The name of this Action (“Carollo et al. v. United Capital Corp. et al.”);
- (b) The full name, last four digits of Social Security Number, address, telephone number of the Class Member requesting to be excluded; and
- (c) A declaration stating “I request that I be excluded from the Settlement in Carollo et al v. United Capital Corp. et al. and do not wish to participate in the Settlement. I understand that by requesting to be excluded from the Settlement, I will not receive any benefits under the Settlement.”

**6.2** The Administrator will send a final list of all Class Members who submit Opt-Out Statements to Class Counsel and Defense Counsel eight (8) days before the Fairness Hearing and to be updated as appropriate until the date of the Fairness Hearing. The Administrator will retain the stamped originals of all Opt-Out Statements as well as all envelopes accompanying such Opt-Out Statements until such time as the Administrator is relieved of its duties and responsibilities under this Agreement.

**6.3** Any Class Member who does not submit an Opt-Out Statement pursuant to this Agreement will be deemed to have accepted the Settlement, including all terms and conditions of this Agreement, including but not limited to, Paragraph 2.38, Released Claims, and will be bound by the Final Order and Judgment of Dismissal with Prejudice.

**6.4** Defendants shall have no obligation to pay any Class Member who timely submits an Opt-Out Statement as set forth in this Agreement.

**7. OBJECTIONS TO THE SETTLEMENT**

- 7.1** Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing must first do so in writing and submit it to the Claims Administrator by the Notice Deadline. Written Objections must set forth the following:
- (a) the name of the proceedings (“Carollo et al. v. United Capital Corp. et al.”);
  - (b) the Class Member’s full name, current mailing address, and telephone number;
  - (c) a statement of the specific grounds for the objection, as well as any documents supporting the Objection;
  - (d) a statement as to whether the objection applies only to the objector, to a specific subset of the class, or to the entire class;
  - (e) the identity of any attorneys representing the objector;
  - (f) a statement regarding whether the Class Member (or his/her attorney) intends to appear at the Fairness Hearing;
  - (g) all other cases in which the Objector and/or the Objector’s counsel has filed an objection to any proposed class action settlement within the past three (3) years; and
  - (h) the signature of the Class Member or the Class Member’s attorney.
- 7.2** Class Members who fail to make Objections in the manner specified in Paragraph 7.1 of this Agreement will be deemed to have waived any Objections and will be foreclosed from making any Objections, whether by a subsequent Objection, intervention, appeal, or any other process. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Paragraph. Without limiting the foregoing, any challenges to the Settlement Agreement and/or the Final Order and Judgment of Dismissal with Prejudice shall be pursuant to appeal under applicable Court rules and not through a collateral attack.
- 7.2** The Parties may file with the Court written responses to any filed Objections by no later than three (3) days before the Final Fairness Hearing unless otherwise directed by the Court.
- 7.3** An Objector also has the right to appear at the Fairness Hearing either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her written objections at the time he or she submits his or her written objections. If an Objector intends to appear, the person who wishes to speak at the Fairness Hearing

must be identified (name, address, and telephone number) and the identify (name, address and telephone number) of any lawyer who will speak on the person's behalf. An Objector may withdraw his or her objections at any time. No Objector may present an objection at the Fairness Hearing based on a reason not stated in his or her written Objection unless the Court allows it. A Class Member who has submitted an Opt-Out Statement may not submit an Objection to the Settlement.

- 7.4 The Administrator will stamp the date that the written Objection was received on the original and send copies of the Objection and any supporting documentation to Class Counsel and Defense Counsel by email delivery no later than three (3) days after receipt.

**8. FAIRNESS HEARING AND MOTION FOR FINAL APPROVAL AND DISMISSAL**

- 8.1 Class Counsel will prepare a Motion for Final Approval of the Settlement to be filed eight (8) days in advance of the Fairness Hearing.

- 8.2 The Motion for Final Approval of the Settlement will request that the Court, amongst other things: (i) certify the claims of Class Members on a class action basis for purposes of settlement; (ii) approve the Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely submitted an Opt-Out Statement to the Claims Administrator; (iii) Order the Claims Administrator to distribute the Settlement Checks to Authorized Claimants; (iv) Order the attorneys' fees, expenses, and costs to be paid to Class Counsel out of the Qualified Settlement Fund; (v) Order payment of any Enhancement Awards as set forth in Paragraph 10.3; (v) Order the entry of a Final Order and Judgment of Dismissal with Prejudice in accordance with this Agreement; (vii) Order Settlement Expenses be paid to the Claims Administrator; and (viii) 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.

**9. TERMINATION OF AGREEMENT**

- 9.1 Either Party may terminate the Agreement if the Court declines to enter the Preliminary Approval Order or the Final Approval Order. To terminate this Agreement under Paragraph 9.1, the terminating Party shall give written notice to the other Party, through its counsel. In the event that the Court denies Final Approval of the Settlement, which means Notice was already sent to Class Members, then the Claims Administrator will provide a Court approved notice to Class Members that the Agreement did not receive final approval and that, as a result, this Agreement is null and void and no payments will be made under the Settlement. The content of such notice shall be agreed to by the Parties, and the notice shall be mailed by the Claims Administrator via First Class United States Mail.



- 9.2 In the event that the Court fails to enter judgment in accordance with this Agreement or such judgment does not become final as defined herein, this Agreement shall be null and void and the Litigation shall proceed as if no Settlement had been attempted. In such case, the Parties will be returned to their respective statuses as of the date immediately prior to the date that the Agreement became fully executed.
- 9.3 The Parties may jointly or individually seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or the Final Approval Order in the form submitted to the Parties, or to seek Court approval of a renegotiated Settlement.

10. **SETTLEMENT TERMS**

10.1 **Total Settlement Amount.**

Two (2) days after the Fairness Hearing, after receiving the detailed breakdown of information from the Claims Administrator as to Authorized Claimants, Defendants shall deposit the amount necessary to cover all Authorized Claimants' Settlement Checks, the amount requested in attorneys' fees and costs, Enhancement Awards, and the anticipated amount of Settlement Expenses into a QSF. To the extent additional funds are necessary, as long as consistent with the Settlement Agreement, funds shall be provided within three (3) business days' notice from the Claims Administrator.

10.2 **Net Settlement Fund and Allocation to Authorized Claimants.**

- A. Class Members' proportionate share of the Net Settlement Fund will be determined by the Claims Administrator pursuant to the following allocation:

**Banquet Class Net Settlement Fund:** In order to calculate the Banquet Class Member Individual Settlement Amounts, take each individual Banquet Class Member's gross wage earnings for the Banquet Class Relevant Time Period as the numerator and divide it by the sum of the gross gross wage earnings for the entire Banquet Class as the denominator. The denominator for each Banquet Class Member in that category will be the same number. As a result of this calculation, the total of all Banquet Class Members' numerators must equal the denominator. Thus, the Banquet Class Member's individual gross wages divided by the sum of all gross wages for all Banquet Class Members in that category equals his/her individual percentage allocation. Each Banquet Class Member's individual percentage allocation shall be multiplied by the Banquet Class Net Settlement Fund amount.

**Restaurant Class Net Settlement Fund:** In order to calculate the Restaurant Class Member Individual Settlement Amount, take each

individual Banquet Class Member's gross wage earnings for the Restaurant Class Relevant Time Period as the numerator and divide it by the sum of the gross wage earnings for the entire Restaurant Class as the denominator. The denominator for each Restaurant Class Member in that category will be the same number. As a result of this calculation, the total of all Restaurant Class Members' numerators must equal the denominator. Thus, the Restaurant Class Member's individual gross wages divided by the sum of all gross wages for all Restaurant Class Members in that category equals his/her individual percentage allocation. Each Restaurant Class Member's individual percentage allocation shall be multiplied by the Restaurant Net Settlement Fund amount.

**Hourly Employee Class Net Settlement Fund:** In order to calculate the Hourly Employee Class Member Individual Settlement Amount, each member of the Hourly Employee Class shall receive a *pro rata* share of the Hourly Employee Class Net Settlement Fund amount.

**10.3 Enhancement Awards to Named Plaintiffs.** In return for services rendered to the Class, Class Counsel will seek the following Enhancement Awards from the Court from the Total Settlement Amount: (1) Deanna Carollo, \$10,000; and (2) Diana Owens, \$10,000. Defendants shall not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court, provided it does not increase the amount of the Total Settlement Amount. In the event that the Court inquires about Defendants' position regarding the Enhancement Awards, Defendants will inform the Court that they take no position provided that the Enhancement Awards do not increase the amount of the Total Settlement Amount. The outcome of the Court's ruling on the application for Enhancement Awards shall not terminate this Agreement or otherwise affect the Court's decision on the motion for final approval of this Agreement.

**A.** In addition to the waiver and release contained in Paragraph 2.38 above, in consideration for the Enhancement Awards, each Class Member receiving an Enhancement Award knowingly and voluntarily, on behalf of himself and on behalf of his respective current, former and future heirs, spouses, executors, administrators, agents, attorneys, and assigns, irrevocably waives, releases, and fully discharges Releasees from any and all claims, debts, losses, demands, obligations, liabilities, causes of action, charges, grievances, complaints, or suits of any kind that may be legally waived by private agreement, whether known or unknown, from the beginning of the world through the date on which each respective Named Plaintiff executes this Agreement, including, but not limited to: (i) claims arising directly or indirectly from each Named Plaintiff's association with Releasees, whether as an employee, independent contractor, or otherwise, and/or the termination of that association; (ii) claims arising directly or indirectly from the actions or inaction of Releasees; (iii) claims under federal, state, or local laws, statutes, constitutions, regulations, rules, ordinances, or orders, including, but not limited to, claims under Title VII of the Civil Rights Act

of 1964, the Civil Rights Act of 1991, the Civil Rights Act of 1866, Sections 1981 through 1988 of Title 42 of the United States Code, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, the Employee Retirement Income Security Act of 1974, the Equal Pay Act, the Immigration Reform and Control Act, the Consolidated Omnibus Budget Reconciliation Act, the Fair Credit Reporting Act, the Occupational Safety and Health Act, the Family and Medical Leave Act of 1993, the New York State Human Rights Law, the New York State Civil Rights Law, the New York City Human Rights Law, each as amended, and any other federal, state, or municipal law; and (iv) any other claims, whether for monies owed, reimbursement, attorneys' fees, litigation costs, damages, torts, intentional infliction of emotional distress, negligence, promissory estoppel, breach of contract, breach of an implied covenant of good faith and fair dealing, constructive discharge, wrongful discharge, defamation, fraud, misrepresentation, or otherwise, arising prior to or at the time of each Named Plaintiff's execution of the Agreement. This release includes all claims for damages arising from any such released claims, including claims for liquidated damages, interest, and attorneys' fees, expenses, and costs. Nothing contained in the release set forth in this Paragraph, however, shall preclude any Named Plaintiff from pursuing any claims for unemployment insurance benefits or workers' compensation benefits. Moreover, nothing contained in the release set forth in this Paragraph shall release any Named Plaintiff's rights to any vested benefits under any applicable employee benefit plan.

- B. Named Plaintiffs are also eligible for any payments they are entitled to out of the Net Settlement Fund as Class Members.
- C. All Enhancement Awards paid to Named Plaintiffs shall be made without any withholdings and reported to the IRS on an IRS Form 1099-misc.

#### **10.4 Attorneys' Fees, Expenses, and Costs.**

- A. By no later than seven (7) days before the Notice Deadline, Class Counsel will petition for an award of attorneys' fees of no more than thirty-nine percent (39%) of the Total Settlement Amount. Such motion papers shall be posted on the settlement website. Defendants will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court, provided that the application does not increase the amount of the Total Settlement Amount. The outcome of any proceeding related to Class Counsel's application for attorneys' fees, expenses, and costs shall not terminate this Agreement or otherwise affect the Court's Final Approval. In the event the total amount Defendants are required to pay under this Agreement exceeds one million two hundred thousand dollars (\$1,200,000) exclusive of employer taxes, Plaintiffs' attorneys' fees, expenses and costs shall be reduced by the amount in excess of one million two hundred thousand dollars (\$1,200,000) Defendants are

required to pay under this Agreement with a maximum reduction of ninety thousand dollars (\$90,000).

- B.** Upon payment of the attorneys' fees, expenses, and costs approved by the Court, Class Members who have not timely submitted Opt-Out Statements hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she, or they may have against Defendants for attorneys' fees, expenses, or costs associated with Class Counsel's representation of Class Members for their claims released. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final, and complete payment of all attorneys' fees, expenses, and costs associated with Class Counsel's representation relating to the Action.
- C.** Within seven (7) days after receipt of the funding of the QSF pursuant to Paragraph 10.1, the Claims Administrator shall wire to Class Counsel the Court awarded attorneys' fees and costs.
- D.** Defendants shall issue Form 1099 for the payment and any other such forms as applicable taxing authorities may require.

**10.5 Claims Administrator's Fees and Expenses.** United Capital Corp., AFP Management Corp., and AFP 101 Corp. agree to pay the Settlement Expenses from the Total Settlement Amount.

**10.6 Mailing of Settlement Checks.**

- A.** The Claims Administrator shall, within seven (7) days of the Final Effective Date, send Settlement Checks to Authorized Claimants and the Enhancement Awards to the Named Plaintiffs.
- B.** Any uncashed Settlement Checks of Authorized Claimants after the one-hundred-and-eighty (180) day Settlement Check cashing period shall revert to Defendants. Such reversion payment to Defendants shall be issued by the Claims Administrator no later than one-hundred and eighty-five (185) days after the Settlement Checks are originally mailed to the Authorized Claimants by the Claims Administrator.
- C.** Class Members shall have 180 days after their respective Settlement Checks are mailed to redeem them.
- D.** Any and all unclaimed settlement funds and amounts remaining in the QSF after the distribution will revert back to Defendants.

**10.7 Tax Characterization.**

- A.** Payments to Authorized Claimants will be allocated for tax purposes as follows:

1. Banquet Class and Restaurant Class: (i) 50% in consideration for wage income subject to Internal Revenue Service (“IRS”) Form W-2 reporting (“Wage Payments”); and (ii) 50% in consideration for liquidated damages and interest as non-wage payments subject to IRS Form 1099-misc reporting (“Non-Wage Payments”).
  2. Hourly Employee Class: 100% in consideration for liquidated damages and interest as non-wage payments subject to IRS Form 1099-misc reporting (“Non-Wage Payments”).
- B.** All Wage Payments shall be subject to all applicable employment taxes, including, without limitation, federal, state, and local income tax withholding and the employee share of the FICA tax, and shall be reported to the IRS on an IRS Form W-2. All Non-Wage Payments shall be made without any tax withholdings and shall be reported to the IRS on an IRS Form 1099 issued to each Class Member. Defendants and the Claims Administrator shall exchange such information as is necessary for the Claims Administrator to make proper tax withholdings and comply with all tax reporting obligations.
- C.** Within two (2) days of the Final Approval Order, Thomas & Solomon LLP will provide the Claims Administrator and Defendants’ Counsel with a W-9 Form.
- D.** With respect to the Wage Payments, United Capital Corp., AFP Management Corp., and AFP 101 Corp. shall pay the employer’s share of the FICA tax and any state unemployment taxes that are traditionally borne by employers.
- E.** The Claims Administrator shall be responsible for making all withholdings that are required pursuant to any federal, state, or local tax law or regulation.

**11. HOLD HARMLESS**

- A.** With respect to all payments made pursuant to this Agreement that are not characterized as wage income subject to IRS Form W-2 reporting, Plaintiffs and Class Members assume full responsibility for any and all federal, state, and local taxes or contributions that may hereafter be imposed or required to be paid in accordance with any federal, state, or local law or regulation.

With respect to payments received pursuant to this Agreement that are characterized as attorneys’ fees, costs, or expenses, Class Counsel assumes full responsibility for any and all federal, state, and local taxes or contributions that may hereafter be imposed or required to be paid pursuant to any federal, state, or local law or regulation.

**12. INTERPETATION AND ENFORCEMENT**

- 12.1 No Assignment.** Class Counsel and Named Plaintiffs, on behalf of the Class and each individual Class Member, 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.
- 12.2 No Admission of Liability.** By entering into this Agreement, Defendants do not admit and expressly deny any violation of law or any liability whatsoever to Plaintiffs and/or Class Members, individually or collectively, or to anyone else as a result of or growing out of the matters set forth in the Complaint filed in the Action. Likewise, by entering into this Agreement, Defendants do not admit to the suitability of this case for class or collective Action other than for purposes of settlement. Rather, Defendants enter into this Agreement to avoid further protracted litigation and to resolve and settle all disputes with Plaintiffs and Class Members. The Settlement of the Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the Settlement: (i) 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 as an admission or evidence of the truth of any of the factual allegations in the pleadings filed in the Action; and (ii) 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 that it shall be inadmissible as evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of this Agreement.
- 12.3 Cooperation Between the Parties; Further Acts.** The Parties shall cooperate with each other and shall use their best efforts to obtain the Court's approval of this Agreement and all of its terms. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 12.4 No Other Representations.** Each party acknowledges that, except as expressly set forth herein, no representations of any kind or character have been made by any party or parties, agents, representatives, or attorneys to induce the execution of this Agreement.
- 12.5 Entire Agreement.** This Agreement is an integrated contract that constitutes and contains the entire agreement between the Parties with regard to the subject matter contained herein and supersedes and replaces all prior negotiations and agreements, proposed or otherwise, written or oral, concerning the subject matter contained herein. All prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.


- 12.6 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Plaintiffs and Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.
- 12.7 Arm's Length Transaction; Materiality of Terms.** The Parties have negotiated all of the terms and conditions of this Agreement at arm's length. All of the terms and conditions of this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 12.8 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.
- 12.9 Construction.** The determination of the terms and conditions of this Agreement was 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.
- 12.10 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable (other than Paragraph 10.4), the remaining provisions of this Agreement shall continue in full force and effect.
- 12.11 Governing Law.** The rights and obligations of the Parties set forth in this Agreement shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of New York, without regard to conflict of laws principles.
- 12.12 Continuing Jurisdiction.** The Court shall 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. However, if the Court should refuse or decline to accept jurisdiction over the settlement for any reason, the Parties agree that this Agreement may be enforced in any court of competent jurisdiction located in the State of New York, County of New York. The Court's refusal to retain jurisdiction over the settlement shall not void or otherwise effect this Agreement.
- 12.13 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 a 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. Notwithstanding any such failure, such party shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

- 12.14 Modification.** Prior to entry of the Final Order and Judgment, this Agreement may, with approval of the Court, be modified by written agreement of the Parties or their counsel, who may only sign with the permission of their clients, without giving any additional notice to the Class, provided that such modifications are not materially adverse to the Class. To the extent that Class Members desire to be notified regarding any additional changes as described in this Paragraph, or otherwise after the initial notice of the Settlement, the preliminary approval hearing and the Final Approval Hearing, they must file with the Court in this Action a request for notice, or send such a request in writing to the Claims Administrator or Class Counsel, who shall maintain a list of all such requests that are received. Class Members who have and who provide an e-mail address agree to electronic notification. The provisions of this Paragraph advising Class Members of this requirement shall be included in the Notice of Settlement.
- 12.15 When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution and final approval by the Court. The Parties may execute this Agreement in counterparts, which, when taken together, shall constitute a complete agreement. Each counterpart shall have the same validity, force, and effect as if all Parties had signed the same instrument.
- 12.16 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, email or obtained through a service ensuring an authentication process, 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.
- 12.17 General Acknowledgements.** It is understood and agreed that the Total Settlement Amount and the other good and valuable consideration provided for herein are not a mere recital but are the consideration for this Agreement and all terms herein, including the full and final release effected thereby. The Parties represent and warrant that all payments made from the Settlement to Named Plaintiffs, Class Members, and Class Counsel are fair and reasonable. The Parties represent and warrant that they are entering into this Agreement of their own free will and accord after consultation with their attorneys. The Parties acknowledge that they have jointly prepared this Agreement and that they are executing this Agreement knowingly and voluntarily.



**IN WITNESS WHEREOF**, the Parties hereto have executed, or caused their duly authorized officers to execute, this Agreement as of the dates set forth below.

  
\_\_\_\_\_  
SignNow e-signature ID: 407211380  
Jessica Lukaszewicz, Esq.  
For Class Counsel  
*As to Form Only*

04/30/2023  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Deanna Carollo  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Diana Owens  
\_\_\_\_\_  
Date

\_\_\_\_\_  
United Capital Corp.  
By:  
\_\_\_\_\_  
Date

\_\_\_\_\_  
AFP Management Corp.  
By:  
\_\_\_\_\_  
Date

\_\_\_\_\_  
AFP 101 Corp.  
By:  
\_\_\_\_\_  
Date

**IN WITNESS WHEREOF**, the Parties hereto have executed, or caused their duly authorized officers to execute, this Agreement as of the dates set forth below.

\_\_\_\_\_  
Jessica Lukasiewicz, Esq.  
For Class Counsel  
*As to Form Only*

\_\_\_\_\_  
Date



\_\_\_\_\_  
04/28/2023

\_\_\_\_\_  
SignNow e-signature ID: 50a899340f...  
Deanna Carollo

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diana Owens

\_\_\_\_\_  
Date

\_\_\_\_\_  
United Capital Corp.  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFP Management Corp.  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFP 101 Corp.  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jessica Lukasiewicz, Esq.  
For Class Counsel  
*As to Form Only*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deanna Carollo

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Diana Owens*  
Diana Owens

\_\_\_\_\_  
*4/27/2023*  
Date

\_\_\_\_\_  
United Capital Corp.  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFP Management Corp.  
By:

\_\_\_\_\_  
Date

\_\_\_\_\_  
AFP 101 Corp.  
By:

\_\_\_\_\_  
Date

IN WITNESS WHEREOF, the Parties hereto have executed, or caused their duly authorized officers to execute, this Agreement as of the dates set forth below.

\_\_\_\_\_  
Jessica Lukasiewicz, Esq.  
For Class Counsel  
*As to Form Only*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deanna Carollo

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diana Owens

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
United Capital Corp.      4/28/2023  
Date  
By: *BEN ZIMMERMAN - Vice President*

  
\_\_\_\_\_  
AFP Management Corp.      4/28/2023  
Date  
By: *BEN ZIMMERMAN - Vice President*

  
\_\_\_\_\_  
AFP 101 Corp.      4/28/2023  
Date  
By: *BEN ZIMMERMAN - Vice President*

# Exhibit 1

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

**DEANNA CAROLLO and DIANA J. OWENS,**  
*on behalf of themselves and all other employees similarly  
situated,*

*Plaintiffs,*

v.

**UNITED CAPITAL CORP., AFP MANAGEMENT  
CORP. and AFP 101 CORP.,**

*Defendants.*

**No. 6:16-CV-0013 DNH/TWD**

**NOTICE OF CLASS ACTION LAWSUIT, SETTLEMENT AND FAIRNESS HEARING**

**TO: All hourly banquet class members (including, but not limited to, job titles such as banquet servers, bartenders, and captains) who worked at the Radisson Hotel Utica Centre in Utica, New York during the period from January 5, 2010 to March 24, 2021 (“Banquet Class”).**

**AND/OR**

**All tipped restaurant employees who worked at the restaurant located in the Radisson Hotel Utica Centre in Utica, New York during the period from January 5, 2010 through March 24, 2021 (“Restaurant Class”).**

**AND/OR**

**All hourly employees of the Radisson Hotel Utica Centre in Utica, New York during the period from April 9, 2011 through March 24, 2021 (“Hourly Employee Class”).**

**ACCORDING TO DEFENDANTS’ RECORDS YOU HAVE BEEN IDENTIFIED AS IN  
THE FOLLOWING CLASS(ES):**

**[INSERT CLASS OR CLASSES FOR CLASS MEMBER]**

**PLEASE READ THIS NOTICE CAREFULLY**

**This Notice relates to a proposed Settlement of a class action lawsuit. It has been authorized by a New York District Court, Northern District of New York. It contains important information as to your right to participate in the Settlement or elect not to be included in the class.**

**INTRODUCTION**

Former employees Deanna Carollo and Diana J. Owens (“Class Representatives”) have asserted claims on behalf of those similarly situated (“Plaintiffs”) relating to the mandatory banquet fee, minimum wage/overtime, and/or the Wage Theft Prevention Act notices at the Radisson Hotel

Utica Centre in a lawsuit captioned *Carollo, et al. v. United Capital Corp., et al.*, United States District Court, Northern District of New York (the “Settled Lawsuit”). This lawsuit has been brought against United Capital Corp., AFP Management Corp., and AFP 101 Corp. (collectively, the “Defendants”). In general, the Settled Lawsuit alleges that, among other things, Defendants violated federal and/or state law by: (1) failing to pay mandatory service charges added to banquet or catered events to banquet service workers at the Radisson Hotel Utica Centre; (2) failing to provide the required notice in order to pay banquet service workers and restaurant service workers subminimum wages; (3) failing to provide proper wage notices to employees; and (4) failing to properly pay all overtime compensation.

The Parties to the Settled Lawsuit disagree as to the probable outcome of the Settled Lawsuit with respect to liability and damages had the allegations not been settled. While the Class Representatives were prepared to proceed with litigating the Settled Lawsuit, they recognized that litigation is a risky proposition and that they may not have prevailed on any or all of their claims. Likewise, while Defendants were confident that they had strong legal and factual arguments that would resolve the Plaintiffs’ claims in their favor, they recognize the risks, distractions, and costs involved with continued litigation. As such, after completing fact discovery which involved numerous depositions and the exchange of significant documentation, Plaintiffs and Defendants agreed to participate in a settlement mediation with Martin F. Scheinman, Esq. (the third mediation during the course of the litigation), and, as a result of the mediation and additional discussions and negotiations, the Parties were able to agree to settlement terms described in the Settlement Agreement (“Settlement” and “Agreement”).

This Settlement is the result of good-faith, arms-length negotiations between the Plaintiffs and Defendants, through their respective attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Class Members.

**YOUR LEGAL RIGHTS AND OPTIONS IN THE PROPOSED SETTLEMENT**

<b>Do Nothing</b>	<p>By doing nothing, you will be foregoing the ability to receive distribution from the Net Settlement Fund in the form of a Settlement Check.</p> <p>You are also relinquishing any rights you may have to sue Defendants regarding the Settled Lawsuit.</p>
<b>Timely Submit Claim Form</b>	<p><b>Submit a Claim Form.</b> To be submitting a timely and valid Claim Form, you are participating in the Settlement, and you will receive distribution from the Net Settlement Fund in the form of a Settlement Check. You will be bound by the terms of the Settlement, if approved by the Court.</p>

<p><b>Opt-Out of the Settlement</b></p>	<p><b>Submit an Opt-Out Statement.</b> By submitting a timely and valid Opt-Out Statement, you are forfeiting any right under the Settlement Agreement, including any right to distribution of a Settlement payment. You will not be bound by the terms of the Settlement, if approved by the Court.</p>
<p><b>Object to the Settlement</b></p>	<p><b>Submit an Objection.</b> By submitting a timely and valid Objection, you are letting the Court know you disagree with some or all of the terms of the Settlement. You will receive distribution from the Net Settlement Fund in the form of a Settlement Check only if you also submit a timely and valid Claim Form.</p>

**This Notice explains these rights and options and the deadlines to exercise them. The Court still has to decide whether to approve this Settlement. Benefits for valid claims will be provided if the Court approves the Settlement and after any appeals are resolved. Please be patient.**

Details about how each option would affect your rights are explained below.

**1. Why did I receive this notice?**

You have received this notice because Defendants’ records show that you are in the **[Insert Classes Identified in Defendants’ Records for Class Member]** Class(es).

In general, Class Members are receiving this notice because Defendants’ records show that they worked: (1) as an hourly banquet employee (including, but not limited to a banquet server, bartender, or captain) at Radisson Hotel Utica Centre during the period of January 5, 2010 to March 24, 2021; **and/or** (2) as a tipped restaurant service worker at the Radisson Hotel Utica Centre from January 5, 2010 to March 24, 2021; **and/or** (3) as an hourly employee employed at Radisson Hotel Utica Centre during the period April 9, 2011 to March 24, 2021.

**2. What is a class action?**

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as Class Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable David N. Hurd United States District Court, Northern District of New York is the Judge who is presiding over this class action.

**3. Why is there a Settlement?**

Class Counsel have analyzed and evaluated the merits of the claims made against Defendants in the Settled Lawsuit and completed depositions, as well as analyzed payroll records, banquet and records, and other pertinent data for Plaintiffs. The Parties participated in three separate settlement mediations during the course of the litigation, with the third and final mediation being on February 15, 2023 with Martin F. Scheinman, Esq. Based upon their analysis and evaluation of the relevant data, relevant law and the substantial risks of continued litigation, including the possibility that the litigation, 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 has negotiated this proposed Settlement. 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 Plaintiffs and other Class Members, such as yourself.

#### 4. Terms of the proposed Settlement

If the Settlement is approved, Defendants will pay a sum not to exceed \$1,800,000.00 (the “Total Settlement Amount”) into a fund to settle all claims in the lawsuit. The Total Settlement Amount will cover Class Counsel’s attorneys’ fees and costs in an amount not to exceed thirty-nine percent (39%) of the Total Settlement Amount, or seven hundred and two thousand dollars and no cents (\$702,000.00), if approved by the Court. In the event that Defendants are required to expend in excess of one million two hundred thousand dollars (\$1,200,000) in total exclusive of payroll taxes, Class Counsel’s attorneys’ fees shall be reduced by the amount in excess of one million two hundred thousand dollars (\$1,200,000) Defendants are required to pay with a maximum reduction of ninety thousand dollars (\$90,000). Additionally, the Settlement proposes that the Class Representatives, who took a lead role in this litigation and assisted in its resolution, would each receive service payments up to \$10,000, for their significant involvement and time devoted to this litigation for the benefit of the Class Members. The Total Settlement Amount will also include the full cost of administration of the Settlement and Claims process.

The “Net Settlement Fund” is the Total Settlement Amount less the deductions set forth in the preceding paragraph. The Net Settlement Fund will then be allocated to Class Members.

The distribution of the Net Settlement Fund will be determined as follows:

1. The Banquet Class Net Settlement Fund shall be 63.7814% of the Net Settlement Fund. Each Banquet Class Members’ Individual Settlement Amount will be determined by the settlement administrator pursuant to the following allocation:

**Banquet Net Settlement Fund:** In order to calculate the Banquet Service Class Member Individual Settlement Amounts, take each individual Banquet Class Member’s gross wage earnings for the Banquet Class Relevant Time Period as the numerator and divide it by the sum of the gross wage earnings for the entire Banquet Class as the denominator. The denominator for each Banquet Class Member in that category will be the same number. As a result of this calculation, the total of all Banquet Class Members’ numerators must equal the denominator. Thus, the Banquet Class Member’s individual gross wages divided by the sum of all gross wages for all Banquet Class Members in that category equals his/her individual percentage allocation. Each Banquet Class Member’s individual percentage allocation shall be multiplied by the Banquet Class Net Settlement Fund amount.

2. The Restaurant Class Net Settlement Fund shall be 11.0642% of the Net Settlement Fund. Each Restaurant Class Members’ Individual Settlement Amount will be determined by the settlement administrator pursuant to the following allocation:

**Restaurant Class Net Settlement Fund:** In order to calculate the Restaurant Class Member Individual Settlement Amount, take each individual Banquet Class Member’s gross wage earnings for the Restaurant Class Relevant Time Period as the numerator and divide it by the sum of the gross wage earnings for the entire Restaurant Class as the denominator. The denominator for each Restaurant Class Member in that category will be

the same number. As a result of this calculation, the total of all Restaurant Class Members' numerators must equal the denominator. Thus, the Restaurant Class Member's individual gross wages divided by the sum of all gross wages for all Restaurant Class Members in that category equals his/her individual percentage allocation. Each Restaurant Class Member's individual percentage allocation shall be multiplied by the Restaurant Net Settlement Fund amount.

3. The Hourly Employee Class Net Settlement Fund shall be 25.1544% of the Net Settlement Fund. Each Hourly Employee Class Members' Members' Individual Settlement Amount will be determined by the settlement administrator pursuant to the following allocation:

**Hourly Employee Class Net Settlement Fund:** In order to calculate the Hourly Employee Class Member Individual Settlement Amount, each member of the Hourly Non-Tipped Class shall receive a *pro rata* share of the Hourly Employee Class Net Settlement Fund amount.

In the event any Class Member qualified to be in two or more Classes, they are entitled to distributions collectively in each of the Classes.

**Each Class Member who timely submits the enclosed Claim Form to the settlement administrator by [Insert Notice Deadline] shall receive an individual payment(s) pursuant to the above calculations.**

Fifty percent of the payments to the Banquet and/or Restaurant Classes made pursuant to this Settlement will be paid as wages and subject to required wage withholdings and deductions. The other fifty percent of the payments to Banquet and/or Restaurant Classes made pursuant to this Settlement will be paid as non-wage payments. One hundred percent of the payments to the Hourly Employee Class made pursuant to the Settlement will be IRS Form-1099-misc. Neither Class Counsel nor Defendants make any representations concerning tax consequences of this Settlement or participation in it, and you are advised to seek your own personal tax advice prior to acting in response to this Notice.

#### **5. How do I participate in the Settlement?**

You must submit a Claim Form to the settlement administrator in order to receive Settlement benefits. The Claim Form must be submitted by [Insert Notice Deadline] via email at [Insert Email Address] or fax at [Insert Fax Number] or if mailed, postmarked by [Insert Notice Deadline].

If you move after submitting a Claim Form, it is your responsibility to provide your new address to the settlement administrator. The settlement administrator will use the most recent address it has on file for providing benefits under the Settlement.

If you are no longer employed by Defendants and are part of the Restaurant and/or Banquet Classes, you need to complete the blank IRS Form W-4 enclosed with this Notice and return it to the settlement administrator in the enclosed return envelope. If you are a former employee and fail to provide a signed W-4 form, you will be deemed to have elected zero withholding exemptions for any Settlement payment(s) you receive.

***It is strongly recommended that you retain proof of your timely mailing until receipt of settlement payment.***

**6. How will the proposed Settlement impact my legal rights?**

If the Court approves the proposed Settlement and you do not opt out of the Settlement, you will no longer be able to sue Releasees (definition is in the below paragraph) for any and all claims, debts, losses, demands, obligations, liabilities, causes of action, charges, grievances, complaints, or suits of any kind that relate to his or her compensation or any wage and hour violations that may have occurred during, arising from, or relating to Class Member's employment at the Hotel under federal, state, and/or local law from January 5, 2010 through date of full execution of this Agreement for the Restaurant and Banquet Classes and then April 9, 2011 through date of full execution of this Agreement for the Hourly Employee Class including, but not limited to, any and all claims for unpaid wages, overtime compensation, gratuities, tips, tip credits, tip allowances, service charges, administrative charges, operational charges, other mandatory charges, commissions, improper deductions, travel time, bonuses, penalties, spread-of-hours pay, meal breaks, meal credits, uniform maintenance, uniform reimbursement, expense reimbursement, failure to maintain and furnish employees with proper wage notices and statements, other compensation, wages or benefits, including, but not limited to, life insurance, accidental death and disability insurance, sick leave, other employer-provided plans or programs, distributions of income or profit, vacation or other leave time, retirement benefits, pension benefits, and any other claims that were or could have been asserted in the litigation, whether known or unknown, under federal, state, and/or local wage and hour laws (including, but not limited to, the Fair Labor Standards Act, New York Labor Law, New York Code of Rules and Regulations, New York Hospitality Industry Wage Order, New York Restaurant Industry Wage Order, New York Minimum Wage Order for Miscellaneous Industries and Occupations, and New York Wage Theft Prevention Act). This release includes all claims for relief relating to any such released claims, including claims for liquidated damages, punitive damages, penalties, interest, and attorneys' fees, costs, and expenses outside of those provided for under this Agreement. Nothing shall preclude any Class Member from pursuing any claims for unemployment insurance benefits or workers' compensation benefits; however, the Named Plaintiffs affirm that they are unaware of any workplace injury that they suffered. Moreover, Plaintiffs acknowledge that they were not members of any employee benefit plan during their employment with Defendants.

In addition, if the Court grants final approval of the Settlement, this action will be dismissed with prejudice and Class Members who do not timely opt out will fully release and discharge Defendants, Defendants' present, former, and future parents, subsidiaries, affiliates, and related entities, including each of their respective present and former shareholders, members, owners, officers, investors, directors, employees, managers, fiduciaries, trustees, employee benefit plan administrators, agents, attorneys, insurers, representatives, successors, and assigns, as well as any persons or entities acting in concert with any of them and any individual or entity that could be jointly liable with any of them ("Releasees").

**7. How do I exclude myself from ("opt-out of") the Settlement?**

If you do not wish to participate in this proposed Settlement, but you want to keep the right to sue or continue to sue Defendants, on your own, about the legal issues in this case or which are released by this Settlement, then you must take steps to exclude yourself from or opt-out of the settlement.

The Opt-Out Statement must set forth the following:

- a. The name of this action (“*Carollo et al. v. United Capital Corp. et al.*”);
- b. The letter must include your full name, last four digits of your Social Security Number, current address, and telephone number; and
- c. A declaration stating “I request that I be excluded from the Settlement in *Carollo et al. v. United Capital Corp., et al.*, and do not wish to participate in the Settlement. I understand that by requesting to be excluded from the Settlement, I will not receive any benefits under the Settlement.”

Your request for exclusion must be emailed, faxed or postmarked no later than **[45 days after Notice Deadline]** and if mailed must be mailed to:

**[SETTLEMENT ADMINISTRATOR ADDRESS]**

**REQUESTS TO OPT-OUT THAT ARE NOT RECEIVED OR POSTMARKED ON OR BEFORE [DATE] WILL NOT BE HONORED.**

If you opt-out of the Settlement, you cannot also object to the Settlement.

If you properly submit a timely Opt-Out Statement, you will not be eligible to receive any of the benefits under the Settlement.

**8. If I opt-out, can I get money from this Settlement?**

No. If you opt out, you will not receive any money from this Settlement. But, you may sue, continue to sue, or be part of a different lawsuit against Defendants regarding these same claims.

**9. How do I tell the Court that I don’t like the Settlement?**

As a Class Member, you can object to the proposed Settlement if you do not think the proposed Settlement is fair, reasonable, or adequate by filing a written objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the Settlement. If the Court denies approval, the Class Members will not receive the benefits described in this notice, and the lawsuit will continue.

You may object to the proposed Settlement in writing and appear at the Fairness Hearing, either in person or through your own attorney, at your own expense, if the Court allows. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must include:

- i. the name of the proceedings (“*Carollo, et al. v. United Capital Corp., et al.*”);
- ii. your full name, current mailing address, and telephone number;
- iii. a statement of the specific grounds for the objection, as well as any documents supporting the objection;
- iv. a statement as to whether the objection applies only to you, to a specific subset of the class, or to the entire class;

- v. the identity of any attorney(s) representing you;
- vi. a statement regarding whether you (or your attorney) intends to appear at the Fairness Hearing;
- vii. all other cases in which you (or your attorney) have filed an objection to any other proposed class action settlement within the past three (3) years; and
- viii. either your or your attorney's signature.

**CLASS MEMBERS MUST MAIL OBJECTIONS TO THE SETTLEMENT ADMINISTRATOR POSTMARKED BY [45 DAYS AFTER THE NOTICE DEADLINE].**

If you wish to be heard at the Fairness Hearing, you must send a signed Notice of Intention to Appear to the settlement administrator no later than [forty-five (45) days following the Notice Deadline (or other date required by the Court)]. The Notice of Intention to Appear must include the following:

- i. the name of this Action (“*Carollo et al. v. United Capital Corp., et al.*”);
- ii. your full name, address, and telephone number if you intend to appear at the Fairness Hearing;
- iii. the words “Notice of Intention to Appear” at the top of the document;
- iv. the points you wish to speak about at the Final Fairness Hearing; and
- v. the identity (name, address, and telephone number) of any lawyer who will speak on your behalf.

If you object and the Settlement is approved, you will still be entitled to receive a Settlement Check under the Settlement that you qualify for only if you must submit a valid Claim Form (see Question 5 above). Submitting a Claim Form does not waive your objection to the Settlement.

If you want to keep the right you may have, if any, to sue Defendants based on the claims set forth in the Settlement Agreement, you must exclude yourself from the Settlement classes, as described above in Question 7.

If you have submitted an Opt-Out Statement, you may not also submit objections to the Settlement. Class Counsel and Defendants may file with the Court a written response to any filed objections not later than four (4) calendar days before the Fairness Hearing.

**10. What’s the difference between objecting and excluding or opting out?**

Objecting is simply telling the Court that you don’t like something about the Settlement. You can object only if you stay in the Class. Excluding yourself from the Settlement (“opting-out”) is telling the Court that you don’t want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

The Court will hold a Fairness Hearing to decide whether to approve the Settlement. Class Counsel will answer questions the Judge may have. You do not have to come to the hearing, but you are welcome to do so at your own expense.

If you send an objection, it is not necessary for you to come to Court to talk about it, but you may do so at your own expense or pay your own lawyer to attend. As long as you mailed your written objection to the settlement administrator at the above addresses on time, the Court will consider it. If you do attend the hearing, it is possible that you will not be permitted to speak unless you timely object in writing as described above and indicate in writing your intention to appear at the Fairness Hearing.

**11. Do I have a lawyer in this case?**

The law firm of Thomas & Solomon LLP, 693 East Avenue, Rochester, New York 14607, (877) 272-4066, along with Black & Buffone, has been designated as legal counsel to represent you and the other Class Members. These lawyers are called Class Counsel. You will not be charged separately for these lawyers. Attorneys' fees and litigation costs and expenses will be deducted from the Total Settlement Amount noted above in order to pay Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

**12. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Fairness Hearing at \_\_\_ a.m/p.m. on \_\_\_\_\_, 2023 before Honorable David N. Hurd at the United States District Court, Northern District of New York, 10 Broad Street, Utica, New York 13501. Please note that the hearing may be conducted virtually by online or telephonic means. At this hearing the Court will consider whether the terms of the Settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**13. Can the Settlement Agreement be modified?**

Prior to entry of the Final Approval Order and Judgment, the Settlement Agreement may, with approval of the Court, be modified by written agreement of the Parties or their counsel, who may only sign with the permission of their clients, without giving any additional notice to the Settlement Class, provided that such modifications are not materially adverse to the Settlement Class. To the extent that Class Members desire to be notified regarding any additional changes as described in this paragraph, or otherwise after the initial notice of the Settlement, the preliminary approval hearing and the Fairness Hearing, they must file with the Court in this Action a request for notice, or send such a request in writing to the settlement administrator or Class Counsel, who shall maintain a list of all such requests that are received. Class Members who have and who provide an e-mail address agree to electronic notification.

**14. Are there more details about the Settlement?**

This Notice only summarizes the proposed Settlement. More details are in the Settlement Agreement which can be located at [insert settlement website]. You can also review the Settlement Agreement by asking for a copy of the Settlement Agreement by writing or calling the settlement administrator.

**CLAIM FORM**

If you were identified as a member of the: (1) Banquet Class; **and/or** (2) Restaurant Employee Class; **and/or** (3) Other Hourly Employee Class, and you wish to make a claim in the Settlement, **you must submit a valid Claim Form by [Insert Bar date]**. You may submit your Claim Form through email, mail or fax:

**EMAIL:** Complete the Claim Form and email it to: [INSERT EMAIL ADDRESS]

**FAX:** Complete the Claim Form and fax it to: [INSERT FAX NUMBER]

**MAIL:** Complete the Claim Form and mail it to the following address:

[INSERT MAILING ADDRESS]

The detailed Notice and Settlement Agreement contains additional information and are available at [WEBSITE] or by calling [SETTLEMENT NUMBER].

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**INSTRUCTIONS**

1. Fill out all fields in **Section I**.
2. Sign, date, and print your name in **Section II**.
3. Submit your claim to the Settlement Administrator by email, fax or mail by **[INSERT DEADLINE]**.

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**SECTION I: NAME AND CONTACT INFORMATION.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_  
\_\_\_\_\_

*Please write clearly and legibly.*

If your claim is accepted and the Court grants final approval, you will receive a payment by check via U.S. Mail.

**SECTION II: REQUIRED SIGNATURE.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

**THIS CLAIM FORM MUST BE COMPLETED, SIGNED, AND SUBMITTED TO THE SETTLEMENT ADMINISTRATOR BY [DATE].**

IF YOU HAVE ANY QUESTIONS ABOUT THIS LAWSUIT, YOUR RIGHTS, OR COMPLETING THIS CLAIM FORM, PLEASE CONTACT THE SETTLEMENT ADMINISTRATOR **AT [INSERT TELEPHONE NUMBER]** OR CLASS COUNSEL AT 585-272-0540 OR CONTACTUS@THEEMPLOYMENTATTORNEYS.COM.