

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOSHUA NOLEN, on behalf of himself)	
and all others similarly situated,)	
)	Case No. 2:17-cv-02237-JWL-JPO
Plaintiff,)	
)	
v.)	CLASS ACTION
)	COLLECTIVE ACTION
FIREBIRDS OF OVERLAND PARK,)	
L.L.C. and FIREBIRDS)	
INTERNATIONAL, INC.,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, along with all exhibits hereto (collectively, the “Agreement” or “Settlement”), resolves the matter captioned Nolen, *et. al.* v. Firebirds International, Inc., *et al.*, No. 2:17-cv-02237 (D. Kan.) (“the Litigation”) and is entered into between Joshua Nolen (“Named Plaintiff”), on the one hand, who represents the FLSA and Rule 23 Classes (collectively “the Class” or “Class Members”), and on the other hand the Defendants and any of their predecessors, successors and assigns, and its and their current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities.

FACTUAL BACKGROUND AND RECITALS

1. Named Plaintiff filed this case on March 22, 2017 in the District Court for Johnson County, Kansas, alleging violations of Minimum Wage and Overtime Laws under State and Federal Law. Defendant removed the matter on or about April 24, 2017. Subsequently, on May 12, 2017, Named Plaintiff amended his claims to expand the allegations to include Firebirds International, Inc., and asserted nationwide claims under Section 16b of the FLSA and attendant

state law pursuant to Fed. R. Civ. P. 23 (“claims”). On May 26, 2017 Defendants answered the Amended Complaint, denying all material allegations. Plaintiffs’ claims were negotiated at arm’s length during the settlement negotiations that resulted in this Agreement.

2. The Parties attended mediation in Philadelphia, Pennsylvania on October 22, 2018 with Diane Welsch, former United States Magistrate Judge, and nationally-renowned mediator in complex litigation, including wage and hour class action litigation. After a full day of negotiations, the parties reached a settlement and memorialized the basic terms of this settlement.

3. During formal discovery and prior to the mediation, the Parties exchanged voluminous information, data and documents necessary to fully and fairly evaluate the Class Members’ claims, including employees’ employment dates and duties, and compensation data, sampling of point of sale records, weeks worked, and hourly pay of class members during the relevant time period.

4. Named Plaintiff and his counsel have conducted an investigation and evaluation of the facts and law relating to the claims asserted in the Litigation. In light of the costs, risks, and delay of continued litigation balanced against the benefits of settlement to the Class, Named Plaintiff and his counsel believe that the settlement as provided in this Agreement is in the best interests of the Class and represents a fair, reasonable, and adequate resolution of the claims in the Litigation.

5. Defendants deny and continue to deny all of Named Plaintiff’s allegations in the Litigation. Nonetheless, without admitting or conceding any liability or responsibility for damages, Defendants have agreed to settle the Litigation on the terms and conditions set forth in this Agreement to avoid the burden, expense and uncertainty of continuing litigation.

6. For settlement purposes only, the Parties agree that a class may be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure, defined as follows: All Firebirds servers working in Firebirds Wood Fired Grill restaurants in the states of Alabama, Arizona, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia during the period of May 12, 2014 to October __, 2018 (“Rule 23 State Class”). For settlement purposes only, the Parties agree that a collective action may be certified pursuant to Section 216(b) of the FLSA, defined as follows: All FIREBIRDS servers working in Firebirds Restaurants, and employed by Defendants, nationwide, within three years prior to the execution of this Settlement Agreement (“FLSA Collective”). On June 18, 2018, the Court entered an Order conditionally approving a collective action under the FLSA.

7. If this Settlement Agreement and the settlement it memorializes are not finally approved by the Court, or if any appeal of the Settlement Agreement results in a reversal of the Final Approval Order that affects the amount to be paid by Defendants under this settlement, and/or the nature or scope of the Rule 23 State Class and/or the FLSA collective, and/or the releases given by Class Members or Plaintiff, and/or any other material aspect of the settlement, then this agreement for certification shall become null and void, and any court order certifying the Rule 23 State Class and/or the FLSA collective based on this Settlement Agreement shall be vacated without prejudice to the right of the Parties to seek or oppose certification.

TERMS OF THE AGREEMENT

This Agreement is a binding and irrevocable agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation. In consideration of the mutual promises herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions Used in this Agreement:

A. **“Administrative Costs”** means (a) the costs of administration of the settlement by a third-party claims administrator pursuant to Section 6 of this Agreement, (b) all Service Payments and Enhancements as described in Section 3(C) of this Agreement, and (c) the sum of \$40,000 held in trust as an “Allocation Correction Set-Aside” in order to make corrections to allocations. This amount excludes employer side Payroll Taxes.

B. **“Preliminary Approval”** means the date the Court enters an Order preliminarily approving this Settlement, including the procedure for notifying Class Members of their eligibility to participate in the Settlement. A proposed preliminary approval order is attached as **Exhibit A**.

C. **“Final Approval”** means the date the Court enters an order approving of this settlement after the notice period to the Class has ended.

D. **“Final Approval Order”** means the order entered by the Court granting final approval of this Settlement Agreement.

E. **“Attorneys’ Fees and Costs”** means the amount paid to Class Counsel from the Gross Settlement Fund pursuant to Section 3(D).

F. **“Firebirds” or “Defendants”** means Firebirds International, Inc. and its predecessors, successors and assigns, its current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities.

G. **“Class Counsel” or “Plaintiffs’ Counsel”** means The Hodgson Law Firm, LLC and The Law Offices of Phillip Murphy.

H. **“Class Members”** means the FLSA Collective and the Rule 23 State Class.

I. **“Effective Date”** means the later of (a) if no appeal of the Court’s Final Approval Order is filed, the day after the deadline for filing any such appeal, or (b) if an appeal is filed, the day after the final resolution of the appeal (including any requests for rehearing and/or petitions for writ of certiorari) and/or the expiration of any time period for any further appeal or judicial review, resulting in the final judicial approval of the Agreement.

J. (i) **“FLSA Collective”** means all Firebirds servers working in Firebirds restaurants, and employed by Defendants, nationwide, within three years prior to the execution of this Settlement Agreement and who complete a claims form.

K. **“Gross Settlement Fund”** means the amount of two million five-hundred thousand dollars (\$2,500,000). This payment includes the settlement allocations to all FLSA Collective Members and Rule 23 State Class Members as described below (Class Members and Participating Class Members as defined herein), including any interest, liquidated and/or multiple damages; Attorneys’ Fees and Costs; and Administrative Costs (as defined above). In no event shall the Gross Settlement Fund, or the amount Defendants are required to pay pursuant to this Settlement Agreement, exceed the sum of two million five-hundred thousand dollars (\$2,500,000), exclusive of Payroll Taxes.

L. **“Named Plaintiff”** means Joshua Nolen.

M. **“Net Settlement Fund”** means the Gross Settlement Fund less Administrative Costs and Attorneys’ Fees and Costs.

N. **“Participating Class Members”** means all class members who do not submit a valid Opt-Out Statement as provided in Section 6(E)(ii)(F).

O. **“Payroll Taxes”** means the amounts to be paid by Defendants for the employer’s share of FICA, Medicare, and FUTA taxes in association with the Settlement Awards (as defined below).

P. **“Released Parties”** means (i) Defendants; (ii) Defendants’ past and present parents, successors and assigns and all their subsidiaries, divisions, affiliates, parents, and successors or assigns; and (iii) all their past and present officers, directors, shareholders, members, partners, agents, employees, advisors, insurers, attorneys, representatives, trustees, heirs, executors, administrators, and predecessors, and successors or assigns of any of the foregoing.

Q. **“Rule 23 State Class”** means All Firebirds servers working in Firebirds Wood Fired Grill restaurants in the states of Alabama, Arizona, Delaware, Florida, Georgia, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Virginia during the period of May 12, 2014 to the Effective Date

R. **“Settlement Award”** means the gross payments that each Class Member shall be entitled to receive pursuant to the terms of the Settlement Agreement and shall be inclusive of any Settlement Payment and any Further Settlement Payment as set forth in Section 3(B)(iii).

S. **“Spreadsheet”** means an electronic spreadsheet which includes the first and last name, Employee ID, last known address, and alternate address if known, of all Class Members and the Class Member’s individual settlement amount based on the Class Member’s number of hours worked.

2. **Non Admission.** By entering into this Agreement, Defendants in no way admit any violation of law or any liability whatsoever to the Named Plaintiff, Class Members, or any other individual, either individually or collectively, all such liability being expressly denied.

Likewise, by entering into this Agreement, Defendants in no way admit to the suitability of this case for class or collective action litigation other than for purposes of settlement. Rather, Defendants enter into this Agreement to avoid further protracted litigation and to resolve and settle all disputes. Settlement of the Litigation, negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of this Agreement or the Settlement: (a) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on part of the Defendants or of the truth of any of the factual allegations asserted in the Litigation; (b) 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; and (c) are not, shall not be deemed to be, and may not be used as an admission or evidence of the appropriateness of these or similar claims for class certification or administration or collective action treatment other than for purposes of administering this Agreement. The Parties understand and agree that this Agreement and all exhibits hereto are settlement documents and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

3. Settlement Fund and Allocation.

A. Net Settlement Fund. Payments of Settlement Awards will be made as follows. Allocated amounts from the Net Settlement Fund which are not claimed shall revert to the Defendant

B. Allocation of the Net Settlement Fund.

(i) A Class Member who does not opt out pursuant to Section 6(E)(ii)(F) will be deemed eligible for a payment hereunder and will be a Class Member.

(ii) Settlement Awards to Class Members and Participating Class Members shall not be considered as a payment of overtime, salary, wages and/or compensation under the terms of any company benefit plan or for any purpose except for tax purposes as provided under Section 7. The receipt by a Class Member of a Settlement Award shall not affect the amount of contribution to or level of benefits under any company benefit plan.

(iii) The Settlement Administrator shall calculate amounts to be paid as follows:

- (1) The Settlement Administrator shall calculate a “Net Settlement Fund,” which shall equal the Total Settlement Amount less the amount of for Court-approved Service Awards for the Named Plaintiff (as described in Section 3(C)), Attorneys’ Fees and Costs approved by the Court (as described in Section 3(D)), the Court-approved Administration Costs for the Settlement Administrator (as described in Section 3(E)), and all payments made pursuant to Section 3(B)(iii)(1).
- (2) The Settlement Administrator shall calculate each Class Member’s Pro Rata Share of the Net Settlement Fund as follows: multiplying the Net Settlement Fund by a fraction, the numerator of which is the number of workweeks worked multiplied by the relevant state tip credit rate (i.e. the difference between the applicable minimum wage and the minimum hourly cash wage for tipped employees under applicable state law), by such Class Member as a server during the period from May 12, 2014 through the date of entry of the Preliminary Approval Order and the denominator of which shall be the total of all Class Member’s workweeks multiplied by the relevant state’s tip credit rate during the period from May 12, 2014 through the date of entry of the Preliminary Approval Order (the “Pro Rata Share”).

- (3) Each Class Member who does not opt out pursuant to Section 6E shall receive the greater of: (i) \$100.00; or (ii) 50% of his or her Pro Rata Share of the Net Settlement Fund (the “Settlement Payment”).
- (4) A Class Member who submits a timely and valid Claim Form pursuant to Section 6E shall, in addition to the Settlement Payment, be eligible to receive a Further Settlement Payment. A Class Member’s Further Settlement Payment shall be equal to 50% of the Class Member’s Pro Rata Share of the Net Settlement Fund (i.e. a Class Member who returns a timely and valid Claim Form shall receive 100% of his or her Pro Rata Share of the Net Settlement Fund).
- (5) Any monies remaining by virtue of Class Members not submitting Claim Forms, or by virtue of Class members not cashing their payments within 90 days of issuance of payment shall revert to the Defendant.

(iv) In the event that any Class Member fails to cash his or her check for the Settlement Payment or the Further Settlement Payment within 90 days from the date of issuance, the check shall be void and payment may be stopped on such check (“Settlement Checks”).

C. Service Payments. In exchange for a separate general release and subject to Court Approval, Named Plaintiff will receive a service payment in the amount of \$15,000. Subject to Court Approval, early opt in Maggie Brooks will receive a service award of \$15,000 and will release all wage and hour claims. Early opt in Maggie Brooks is a Class Member and Participating Class Member. These service payments are being sought in recognition of efforts to pursue the claims raised in this Litigation on behalf of the Class, including providing factual information and otherwise assisting Class Counsel with the prosecution of the Litigation. The service payments will be made at the same time and in addition to the payment of Attorneys’ Fees, set forth in this Agreement. Any amounts allocated as service payments under this Agreement, but

not approved by the Court, shall be added to the Net Settlement Amount, to be proportionally distributed to the Class.

D. Attorneys' Fees and Costs. Class Counsel will seek, and Defendants will not oppose, an award of attorney's fees in the amount of One-Third (1/3) of the Gross Settlement Fund (\$833,333) as attorneys' fees, plus their costs of approximately \$23,838. Any amounts allocated as attorneys' fees and costs under this paragraph, but not approved by the Court, shall be added to the Net Settlement Fund.

E. Administration Costs and Allocation Correction Fund. Of the Gross Settlement Fund, \$40,000 will be set aside for Settlement Administration and to correct any miscalculations or other errors in the allocation to Class Members. Any remainder will revert to the Net Settlement Fund.

F. Within 15 calendar days after entry of the Final Approval Order, the Settlement Administrator shall provide to Class Counsel and Defendants' Counsel a proposed plan of distribution of the Net Settlement Fund, containing the names of and proposed distribution to Class Members and Participating Class Members ("Plan of Distribution"). At the same time, the Settlement Administrator shall also provide an itemized list of its costs and expenses and all other amounts to be deducted from the Gross Settlement Fund, and the Settlement Administrator shall also specify the amount of payroll taxes due with respect to the Settlement Award Payments to Class Members. Each Party shall have seven (7) calendar days from receipt of the Plan of Distribution to serve the other Party and the Settlement Administrator with any corrections to the Plan of Distribution, or to comment on the Administrative Costs and expenses or other deductions. The Settlement Administrator shall make any changes to the Plan of Distribution mutually agreed

upon by the Parties in writing and then serve the final Plan of Distribution within seven (7) calendar days of receiving the last of such corrections.

G. If the Parties disagree over the Plan of Distribution, they will submit any disagreement to the Court for resolution. Any dispute over administrative costs and expenses shall also be submitted to the Court.

H. Defendants shall cause the Net Settlement Fund to be placed into a Qualified Settlement Fund (“QSF”) within the meaning of Treasury Regulation § 1.468B-1, *et seq.* within fifteen (15) calendar days following the Effective Date.

I. Within 15 calendar days after the Net Settlement Fund from Defendants is placed into a QSF, or the date on which the Court resolves any disputes under Section 3(G), whichever is later, the Settlement Administrator will distribute the funds in the QSF as of such date (“QSF Balance”) by making the following payments:

- (i) Reimbursing Class Counsel for all costs and expenses approved by the Court as described in Section 3(D);
- (ii) Paying Class Counsel their Court-approved attorneys’ fees as described in Section 3(D);
- (ii) Paying Named Plaintiff and Early Opt In Brooks their Service Awards as described in Section 3(C), provided that neither shall receive his or her Service Award until he or she has executed and provided to Defendant’s Counsel an individual release in the form attached as **Exhibit E** (and provided that any applicable revocation period has expired; if the revocation period has not expired, the payment will be made no later than 10 calendar days after the expiration of the revocation period); and

J. In connection with the foregoing, the Settlement Administrator will also timely mail all associated tax forms described in Section 7.

4. Release.

A. Named Plaintiff General Release. In accordance with the terms of this Agreement, the Named Plaintiff receiving a Service Award in addition to his pro-rata share of the Settlement Fund hereby executes general releases and waivers of claims. The general release by Named Plaintiff extinguishes any and all claims, obligations, demands, actions, rights, causes of action, and liabilities against FIREBIRDS and the Released Parties, of whatever kind and nature, character, and description, whether in law or equity, whether sounding in tort, contract, federal, state and/or local law, constitution, statute, ordinance, regulation, common law, public policy, or other source of law, whether known or unknown, and whether anticipated or unanticipated, by the Named Plaintiff, arising during the period from the beginning of the Named Plaintiff's dates of employment with FIREBIRDS to the date on which the Court enters the Final Approval Order, for any type of relief, including, without limitation, claims for minimum wages, overtime, non-payment of wages, meal or rest periods, paid and unpaid time off, reimbursement of expenses, waiting time penalties, unfair business practices, or as to manner, method, amount or timing of payment for any wage or benefit claimed to be due, and for any other pay practices of any kind, and any other kind of common law, statutory, or regulatory claims arising out of or in connection with Named Plaintiff's employment with FIREBIRDS or the cessation thereof. The Named Plaintiff's settled claims include, but are not limited to those alleged or which could have been alleged in the Amended Complaint, as well as any other claims under any provision of the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Employee Retirement Income Security Act of 1974, the Family Medical Leave Act, the Genetic Information Non-Discrimination Act, and all of their implementing rules and regulations and interpretive guidelines, and all penalties or restitution relating to or derivative of any or all of

those laws. Excluded from the release are any claims which cannot be waived by law, including the right to file a charge with or participate in an investigation conducted by any federal, state, or local government agency. Named Plaintiff is no longer an employee of Defendants and agrees that he shall not seek nor will he accept employment with any Released Parties.

B. Other Class Member Release.

(i) By operation of the entry of the Judgment and Final Approval Order, and except as to such rights or claims as may be created by this Agreement, the Named Plaintiff, and each Class Member who does not timely opt out pursuant to Section 6(E)(ii)(F), forever and fully release Defendants, its owners, stockholders, predecessors, successors, assigns, and all their agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under or in concert with any of them, including any party that was or could have been named as a defendant in the Litigation settled herein (collectively, the “Released Parties”) from any and all past and present matters, claims, demands, causes of action, and appeals of any kind, whatsoever, whether at common law, pursuant to statute, ordinance, or regulation, in equity or otherwise, which any such individual has or might have, known or unknown, asserted or unasserted, of any kind whatsoever, that are based upon federal, state or local laws governing overtime pay, wage requirements, failure to pay for all hours worked, or that otherwise arise out of or relate to the facts, acts, transactions, occurrences, events or omissions alleged in or underlying the Litigation, including without limitation claims for minimum wages, overtime, nonpayment of wages, meal or rest periods, paid and unpaid time off, reimbursement of expenses, waiting time penalties, unfair business practices, manner, method, amount or timing of any wage or benefit claimed to be due and any other pay practices of any kind and that arose during any time that such

individual was employed by Defendants as a served up until the date of the entry of the Final Approval Order (“Released Claims”). The Released Claims include without limitation claims that were or could have been asserted in the Litigation, including but not limited to any claims based on state, federal or local law governing overtime pay, payment of wages, hours worked, denial of meal periods and rest breaks, denial of spread of hours pay, failure to pay call-in pay, failure to pay wages upon termination, failure to provide itemized wage statements or wage notices, improper calculation of overtime pay, failure to provide benefits or benefit credits, failure to keep records of hours worked or compensation due, and penalties for any of the foregoing, including without limitation any and all claims under the Fair Labor Standards Act (“FLSA”), Mo. Rev. Stat § 290.500, et. seq.; Mo. Code Regs. Ann. tit. 8, § 30-4.020; Ariz. Rev. Stat. 23-362, et seq.; Colo. Rev. Stat. 8-4-101 et. Seq.; Colorado Minimum Wage Order Number 32; 7 Colo. Code Regs. § 1103-1; Conn. Gen. Stat. 31-58; Conn. Regs. § 31-60-2, § 31-62-E3; § 31-62-E4; Fla. Const. Art X Sec 24, Fla. Stat Sec 448.110; Fla. Stat. § 448.109; Ga. Code. Ann. 34-4-3; Ill. Comp. Stat. 105/1 et. Seq.; 820 Ill. Comp. Stat. § 115 et seq.; Ky. Rev. Stat., Ch. 337, et seq.; Md. Code Ann. Lab & Empl. 3-501 et. Seq.; Md. Code Regs. § 09.12.41.19; Mass. Gen. Laws. Ch 151 Sec 1, et. seq; Mich. Comp. Laws 408.414; Mich. Comp. Laws § 408.411 et seq.; N.C. Gen Stat. Sec 95-25, et seq.; N.C. Gen Stat. Sec 95-25.; Ohio Const. Art II Sec 34a, et. seq.; Ohio Minimum Fair Wage Standards Act, O.R.C. § 4111.01, et seq.; Tex. Lab. Code Ann. Sec 62.051, et. seq.; Utah Code Ann. 610-1-3, 1-4; Utah Code § 34-40-104; Va. Code Ann. Sec 40.1-28.10; Code of Va. § 40.1-28.8 et seq.; and all of their implementing rules and regulations and interpretive guidelines, and all claims for penalties or restitution relating to or derivative of any or all of those laws from May 12, 2014 through the Effective Date as set forth in this Agreement and the common law of each of such states, or any other statutory provision, relating wages and hours or to the manner, method,

amount or timing, of payment or provision of benefit or entitlement to any form of compensation for services rendered. In addition, each Participating Class Member hereby releases the Released Parties from any and all claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.*

(ii) Except as provided in this Agreement, Class Counsel and the Named Plaintiff, on behalf of the Class Members and each individual Class Member, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Defendants and the Released Parties for attorneys' fees or costs associated with the Litigation and/or Class Counsel's representation of any individuals in this Litigation. 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 and costs associated with Class Counsel's representation of these individuals in the Litigation. Defendants shall have no additional liability for any fees or costs associated with the Litigation.

C. Covenant Not to Sue. Named Plaintiff agrees to a covenant not to sue as to any Released Claims.

5. Approval of Settlement.

A. Court Approval of Settlement.

(i) *Preliminary Approval.* Within ten (10) business days of execution of this Agreement, Named Plaintiff will seek the Court's preliminary approval of the terms of this Agreement, by filing this agreement with the Court and providing all information requested by the Court ("Preliminary Approval Motion") it being understood and agreed Named Plaintiff and Defendants will agree upon the form and content of the Preliminary Approval Motion prior to its filing. Once the settlement has been preliminarily approved, the settlement administrator shall send settlement notice to the Class Members in a format substantially in compliance with **Exhibit B.**

After the close of the notice period, the Court will then conduct a final approval hearing. If the Court does not grant the Preliminary Approval Motion and enter an order in the form attached as **Exhibit A** hereto, the parties jointly agree to negotiate in good faith over an alternative settlement and to seek reconsideration or Court approval of a renegotiated agreement or appeal of the ruling. In the event such efforts are unsuccessful, the Litigation otherwise settled herein will resume as if no settlement had been attempted. Defendants retain the right to contest whether this Litigation should be maintained as a class action and/or collective action and to contest the merits of the claims being asserted in the Litigation.

(ii) *Final Approval.* The Parties will move for final approval of the Settlement (in a fashion designated by the Court) upon papers and exhibits jointly agreed. The Settlement will be final upon the execution of a Final Approval Order.

(iii) If the Court does not enter a Final Approval Order, or decides to do so only with material modifications to the terms of this Agreement, or if the Final Approval Order is reversed or vacated by a court of competent jurisdiction, then this Agreement shall become null and void, unless the Parties agree in writing to modify this Agreement and the Court approves this Agreement as modified. Notwithstanding the foregoing, if the Court approves the gross amount of the Settlement Fund but determines there should be a reduction of a service award, and/or a reduction of the amount paid to Class Counsel, the Agreement as so modified and approved by the Court, shall remain fully binding on the Parties.

B. Entry of Final Judgment. The Parties shall petition the Court for entry of final judgment, whereby Named Plaintiff and all Participating Class Members shall take nothing from Defendants except as expressly set forth in this Settlement, with all Parties responsible for their own costs and attorneys' fees, except as otherwise specifically provided in this Agreement.

6. Settlement Administration and Payments.

A. The Settlement will be administered by a third-party administrator, to be selected by mutual consent of the Parties (“Settlement Administrator”). The Parties agree not to unreasonably withhold consent to selection of a Settlement Administrator. Reasonable fees and expenses of the Settlement Administrator shall be deducted from the Gross Settlement Fund. The Settlement Administrator shall be responsible, subject to Court approval, for determining eligibility for, and the amount of, the Settlement Awards to be paid from the Net Settlement Fund.

B. Duties. The Settlement Administrator will be responsible for claims administration, with duties as follows: (i) preparing, printing and disseminating to potential Class Members the Notices; (ii) copying Class Counsel and Defendants’ Counsel on material correspondence; (iii) receiving, reviewing and promptly furnishing Defendants’ Counsel and Class Counsel copies of any Opt-out Statements, objections or other written or electronic communications from Class Members which the Settlement Administrator receives; (iv) calculating the amount of Further Settlement Payments to Participating Class Members and mailing Settlement Award checks and Service Awards (as applicable) to Class Members and Participating Class Members consistent with this Agreement and the Final Approval Order; (v) responding to inquiries of Class Members regarding procedures for filing objections and Opt-out Statements; (vi) maintaining adequate records of the dates of the mailing of Class Notice(s) and mailing and receipt of consent and claim forms, Opt-Out Statements, returned mail and other communications and attempted written or electronic communications with Class Members; (vii) retaining copies of original copies of the signed, endorsed, deposited, cashed and/or negotiated settlement checks; (viii) notifying Defendants’ Counsel and Class Counsel of all undeliverable and un-cashed Settlement Checks after 90 days from the date of mailing; (ix) confirming in writing to

Defendants' Counsel and Class Counsel its completion of the administration of the Settlement; (x) such other duties described in this Agreement; and (xi) preparation of and mailing of all notices required under the Class Action Fairness Act, 28 U.S.C. §§ 1332(d), 1453, and 1711–1715.

C. The Settlement Administrator shall be required to agree in writing to treat information it receives or generates as part of the claims administration process as confidential and to use such information solely for purposes of claims administration. Defendants' Counsel and Class Counsel will have equal access to the Settlement Administrator, as well as all information in possession of the Settlement Administrator related to the administration of the Settlement, except that the Settlement Administrator shall not provide Class Counsel with access to any social security numbers provided to or obtained by the Settlement Administrator in connection with its duties under the terms of this Agreement. Neither Party shall have the authority or ability to expand the duties, responsibilities or authority of the Settlement Administrator beyond those described in this Agreement.

D. All fees and expenses of the Settlement Administrator shall be paid out of the Gross Settlement Fund, as defined in Section 1(K). The Settlement Administrator shall be required to agree to a reasonable cap for fees and expenses for claims administration work, and such cap shall provide the basis for the reserve described in Section 3(E). Any fees and expenses in excess of the cap shall not be paid to the Settlement Administrator unless the Settlement Administrator files a declaration with the Court explaining the basis for the additional fees and costs and receives approval by the Court for such payments. In no event shall the Settlement Administrator seek additional fees and expenses after the Fairness Hearing.

E. Notice and Claims Process.

(i) Within fifteen (15) days of Preliminary Approval, Defendants will provide the Spreadsheet, containing the last known contact information, hours worked, information necessary for issuance of checks and payroll tax withholdings, and any other necessary information, to Class Counsel and the Settlement Administrator. The Parties shall provide the Settlement Administrator with all necessary cooperation, including but not limited to the execution of all documents necessary to administer the Settlement. The Parties will provide any other information to the Settlement Administrator necessary to enable it to perform the calculations described in Section 3(B)(iii) and to obtain current contact information. Such information shall be treated by Class Counsel as confidential pursuant to a Protective Order to be entered in this Litigation and may be shared or divulged only to the extent necessary to effectuate the settlement of this Lawsuit. The data provided by Defendants to the Settlement Administrator pursuant to this Agreement (other than address information) shall be conclusively presumed to be accurate.

(ii) **Claim Process:**

(A) Within fifteen (15) business days of receipt of the Spreadsheet and any other information identified in the previous subparagraph, the Settlement Administrator shall mail to the Class Members a notice of the Settlement and consent and claim form in the forms attached as **Exhibits B** and **C** to all Class Members. Notice shall be provided in the following manners:

- a. Direct mail to each Class Member's last known address;
- b. Reminder Notice to be issued via direct mail in a manner set forth in **Exhibit F** 30 days prior to the deadline for submitting claims.

The Notice shall inform the Class Members of the terms of the Settlement including amount of the Settlement Payment, as well as their eligibility to receive the Further Settlement

Payment by completing, signing and returning the enclosed consent and claim form, thereby becoming a Participating Class Member, as well as their anticipated settlement allocation.

Class Members shall be able to submit claim forms electronically, using protocols set up by the Claims Administrator, or alternatively through returning claim forms via direct mail.

Class Members will only be entitled to receive a Further Settlement Payment if they 1) submit claim forms electronically, using the protocol set up by the Settlement Administrator within sixty (60) days of its mailing; or 2) sign and postmark or return their consent and claim form within sixty (60) days of its mailing (“Consent/Claim Deadline”). In the event the procedures in this paragraph are followed, the Settlement Administrator shall be deemed to have satisfied its obligation to provide class notices to all putative class members, and if an intended recipient does not receive a notice, the intended recipient shall nevertheless be bound by all terms of the Settlement Agreement and the Final Approval Order. Any objection and opt-out deadlines as set forth herein shall not be extended for Class Members whose original notices are re-sent pursuant to this paragraph.

(a) The parties will meet and confer in good faith if a Class Member attempts to opt in to the Settlement after the Consent Deadline. Such class member’s statute of limitations shall be tolled until after the meet and confer process has occurred.

(b) No later than fourteen (14) days after the sixty (60) day claims submission period, the Settlement Administrator shall provide to Counsel for the Parties a declaration that includes, but is not limited to, the following information: (i) the total number of putative class who were sent the notices; (ii) the names and total number of members of the putative class who filed complete, accurate, and timely requests for opt-out or exclusion from the Settlement; and (iii) the total number of members of the putative class members who

objected; and (iv) the total number of putative class members who submitted complete, accurate, and timely Claim Forms.

(B) In addition, promptly following the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall prepare final versions of the following documents, incorporating into the documents the relevant dates and deadlines set forth in the Court's Order: (1) a Notice of Proposed Settlement of Class Action Lawsuit and Fairness Hearing in the form attached as **Exhibit A**; and (2) an Opt-Out Statement in the form attached as **Exhibit D**.

(C) Within fifteen calendar days (15) days of Defendants' delivery of the spreadsheet, the Settlement Administrator will mail to all Class Members, via First Class United States Mail, postage prepaid, and keep a written record of the date(s) of such mailing, final versions of the documents referenced in Section 6(E)(ii)(B). The date of such mailing shall be referred to as the "Initial Mailing Deadline."

(D) The Settlement Administrator will take all reasonable steps to obtain the correct address of any Class Members for whom the documents referenced in Section 6(E)(ii)(B) are returned by the post office as undeliverable. The Settlement Administrator will notify Defendants' Counsel and Class Counsel of any such materials sent to a Class Member that are returned as undeliverable after the first mailing, as well as any such materials returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement. For any Class Member whose mailing is returned as undeliverable for which the Settlement Administrator are unable to locate an alternative address, Defendants shall inform Class Counsel of any known alternate addresses or other contact information for attempted re-mailings. All such Class Member personal information will be treated as confidential information pursuant to the Protective Order

in this Litigation. In no event shall the Settlement Administrator attempt re-mailings of the documents referenced herein to any Class member more than forty (40) calendar days after the Initial Mailing Deadline.

(E) The notices shall provide that those Class Members who wish to object to the settlement must serve a written statement of objection (“Notice of Objection”), within sixty (60) days of the mailing of the Notice, to the Settlement Administrator at the address set forth in the Notices, and simultaneously serve on counsel for the Parties a copy of that objection. The service date of any such objection shall be deemed the exclusive means for determining if a Notice of Objection is timely, unless otherwise determined by the Court. The Notice of Objection must state (a) the full name, address, and telephone number of the person objecting and (b) the basis for the objection. Class Members who fail to make objections in the manner specified in this subparagraph shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement.

(F) Class Member Opt-Outs:

(a) Any Class Member may request exclusion by “opting out.” To do so, a Class Member must submit a written and signed request for exclusion to the Settlement Administrator, in the form of the Opt-Out Statement attached as **Exhibit D**.

(b) To be effective, a Class Member’s Opt-Out Statement must be sent to the Settlement Administrator via First Class United States mail, postage prepaid and postmarked no later than a date to be specified on the Notice of Proposed Class Action Lawsuit and Fairness Hearing. This date will be forty-five (45) calendar days after the Initial Mailing Deadline, and the period of time between the Initial Mailing Deadline and this date shall

be referred to as the “Opt-Out Period.” Class Members may consult Class Counsel regarding the opt-out option. However, the opt-out must be signed by the putative Class Member who seeks to opt-out or their authorized representative. No opt-out request may be made on behalf of a group of members of the putative class. The Opt-Out Statement must be sent by mail to the Settlement Administrator (at the address set forth in the preceding paragraph) and must be postmarked within sixty (60) days of the mailing of the Notice. Any putative class member who requests exclusion (opts-out) from the Settlement will not be entitled to any Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.

(c) The Settlement Administrator shall stamp the postmark date on the original of each Opt-Out Statement it receives. The Settlement Administrator shall serve copies of each Opt-Out Statement on Defendants’ Counsel and Class Counsel not later than three (3) days after receipt thereof. Additionally, within five (5) calendar days after the end of the Opt-Out Period, the Settlement Administrator shall send to Class Counsel and Defendants’ Counsel a final list of all persons who timely submitted Opt-Out Statements and stamped copies of any Opt-Out Statements received with social security numbers redacted. Class Counsel shall also, in connection with their Motion for Final Approval, file on ECF copies of any Opt-out Statements, with any address and social security number information redacted from them. Defendants’ Counsel shall be given advance notice and the opportunity to review and comment on such filing. The Settlement Administrator shall retain copies of all originals of envelopes accompanying Opt-Out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

(d) Defendants shall have the option, in the exercise of their sole discretion, to nullify the Settlement and this Agreement by giving notice, in writing, to

Class Counsel and the Court at any time prior to the Fairness Hearing, if 10% or more of Class Members submit an Opt-Out Statement pursuant to this Agreement. In the event of such nullification: (i) the Litigation will proceed as if no settlement had been attempted and no party may use the fact that the Parties agreed to settle this case as evidence of Defendants' liability in this lawsuit or the lack thereof and (ii) Defendants retain the right to contest whether the Litigation should proceed as a class or collective action and to contest the merits of the claims being asserted in the Litigation.

(e) Any Class Member who does not timely opt out will be bound by the release set forth in Section 4(B).

F. Payment of Attorneys' Fees and Service Payments.

(i) Within fifteen (15) calendar days after the Effective Date, Defendants shall wire the total amount of the Court-approved Attorneys' Fees and Costs to the Settlement Administrator.

G. Funding the Settlement and Distribution of Settlement Payments.

(i) Within fifteen (15) calendar days after the Effective Date, Defendants shall wire the total amount of the claimed Net Settlement Fund as well as costs of administration and allocation correction, service awards and employer share of Payroll Taxes to the Settlement Administrator for placement into the QSF. In no event shall there be any distribution from the Net Settlement Fund until after the Effective Date.

(ii) Within ten (10) calendar days of funding, the Settlement Administrator shall cause the QSF to issue the Settlement Payment Checks to the class.

(iii) Any Class Member who does not submit an Opt-Out Statement pursuant to this Agreement will be issued a Settlement Payment check (together with a copy of the

Notice attached as **Exhibit C**), within 30 days after the Effective Date which will contain the following language:

By signing, depositing, cashing and/or negotiating this check I hereby agree to release Firebirds International Inc., and other Released Parties described in Section 10 of the Notice accompanying this check from any claim I may have as set forth in the Notice accompanying this check.

(iv) Any Participating Class Member who submits a claim form pursuant to this Agreement will be issued a Further Settlement Payment Check. The Further Settlement Payment Check will contain the following language:

(v) “By signing, endorsing, depositing, cashing and/or negotiating this check, I hereby consent to join as a party the collective action under the Fair Labor Standards Act. I further understand and agree to the release of claims set forth in Section 10 of the Notice I was provided.”

(vi) Regardless of whether he or she signs, negotiates, deposits, cashes or endorses the Settlement Check, any Class Member who does not opt out pursuant to Section 6(E)(ii)(F) is subject to bound by the release set forth in Section 4(B).

(vii) The Settlement Administrator shall retain copies of the originals of the signed, endorsed, deposited, cashed and/or negotiated Settlement Payment and Further Settlement Payment checks until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

H. Undeliverable Settlement Materials. If materials sent to a Class Member are returned as undeliverable, the Settlement Administrator shall promptly undertake reasonable steps to determine the Class Member’s current address and, if an additional address is located, to send the materials to the updated address.

7. **Tax Treatment of Payments.** For Settlement Awards payments as set forth in Section 3(B) above, fifty percent (50%) of the amount(s) paid to each Class Member and/or Participating Class Member under this Agreement shall be reported by the Settlement Administrator as wages to the appropriate taxing authorities on a Form W-2 issued to the Class Member and/or Participating Class Member with his or her taxpayer identification number, and shall be subject to deductions for applicable taxes and withholdings as required by federal, state, and local law. The remaining fifty percent (50%) of the amount(s) paid to each Class Member and/or Participating Class Member will be allocated to liquidated damages, interest and/or penalties and reported by the Settlement Administrator as non-wage income to the appropriate taxing authorities on a Form 1099 issued to the Class Member. Service payments will be treated as non-wage income and reported by the Settlement Administrator to the appropriate taxing authorities on a Form 1099 issued to the Class Member.

8. **Tax Liability.** Defendants make no representations as to the tax treatment or legal effect of the payments called for under this Settlement Agreement, and Class Members and Participating Class Members are not relying on any statement or representation by Defendants in this regard. Class Members and Participating Class Members understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement. Class Members and Participating Class Members understand and agree that the Settlement Administrator will be responsible for issuing all tax forms and any necessary tax withholding. The Settlement Administrator, as administrator of the QSF making such payments, shall report that portion of the respective Settlement Payments treated as wages to the respective Employees and to the United States Internal Revenue Service and to other appropriate taxing authorities (“Taxing Authority” or “Taxing Authorities”) on Forms W-2. Such

portions of the Settlement Payments treated as wages shall be subject to applicable employment taxes and withholding taxes, as determined by the Settlement Administrator as administrator of the QSF making such payments. Defendants shall bear the cost of the employer's share of taxes for such payments, which share of taxes will not come out of the Net Settlement Fund. In the event that it is subsequently determined by any Taxing Authority that any Employee owes any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that liability for such taxes rests exclusively with that Employee and that Defendants will not be responsible for the payment of such taxes, including any interest and penalties. The Settlement Administrator, as administrator of the QSF, shall report that portion of the Settlement Payments treated as liquidated damages and interest pursuant to this Section to the respective Employees and Taxing Authorities, to the extent required by law, under the Employees' names and federal taxpayer identification numbers on Forms 1099, and such payments shall be paid without deductions for taxes and withholdings, except as required by law, as determined by the Settlement Administrator as administrator of the QSF making such payments.

The Settlement Administrator, as administrator of the QSF, shall report to the respective payees and to the Taxing Authorities on a Form 1099 any Service Awards made pursuant to Section 3(C), and such payments shall be paid without deductions for taxes and withholdings, except as required by law, as determined by the Settlement Administrator as administrator of the QSF making such payments.

The Settlement Administrator, as administrator of the QSF, shall report the fees and costs paid to Class Counsel pursuant to Section 3(D) to Class Counsel (and to the Taxing Authorities) on a Form 1099, under Class Counsel's federal taxpayer identification number. Payment of such fees and costs to Class Counsel shall be made without deductions for taxes and withholdings,

except as required by law, as determined by the Settlement Administrator as administrator of the QSF making such payments.

The Defendants shall have no liability or responsibility whatsoever for taxes of the QSF, any Class Member, Class Counsel, or any other person or the filing of any tax returns, information reports or other documents with the Internal Revenue Service or any other taxing authority with respect thereto. Class Members and Class Counsel will be solely responsible for all taxes, interest and penalties owed by Class Members and Class Counsel with respect to any payment received pursuant to this Agreement. Class Members and Class Counsel will indemnify, defend, and hold Defendants and the Settlement Administrator harmless from and against any and all taxes and interest as a result of a Class Member or Class Counsel's failure to timely pay such taxes. Named Plaintiff, on behalf of the Class, acknowledges and agrees that Defendants have provided no advice as to the taxability of the payments received pursuant to this Agreement.

For tax purposes:

(1) The Defendants shall be the "transferor" within the meaning of Treasury Regulation § 1.468B-1(d)(1) to the QSF with respect to the amounts transferred;

(2) The Settlement Administrator shall be the "administrator" of the QSF within the meaning of Treasury Regulation § 1.468B-2(k)(3), responsible for causing the filing of all tax returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed by or with respect to the QSF, and complying with any applicable information reporting or tax withholding requirements imposed by Treasury Regulation § 1.468B-2(1)(2) or any other applicable law on or with respect to the QSF, and in accordance with Section 7 of this Agreement; and

(3) The Defendants and the Settlement Administrator shall reasonably cooperate in providing any statements or making any elections or filings necessary or required by applicable law for satisfying the requirements for qualification as a QSF, including any relation- back election within the meaning of Treasury Regulation § 1.468B-1(j).

9. **CIRCULAR 230 DISCLAIMER.** EACH PARTY TO THIS SETTLEMENT AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY,” AND EACH PARTY TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B) HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER

PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS SETTLEMENT AGREEMENT. Any payment hereunder shall not be considered as a payment of overtime, salary, wages and/or compensation under the terms of any company benefit plan or for any purpose.

10. Court Retains Jurisdiction To Enforce Agreement. The Court may retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement, to the extent permitted by law, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Agreement. Any action to enforce this Agreement shall be commenced and maintained before this Court.

11. Cooperation Clause. The Parties agree to cooperate in good faith to effectuate the Settlement of the Litigation, including securing the Court's approval of the Agreement, assisting with the administration of the Settlement in accordance with the terms of this Agreement, and obtaining a final judgment.

12. No Statements to the Media; Confidentiality. With respect to this Settlement, Named Plaintiff and Class Counsel agree not to publicize or contact the media, or disclose any

information, about the negotiations process. If asked by the media, the Named Plaintiff and Class Counsel agree to state, “The matter was amicably settled.”

13. Documents. The Named Plaintiff and Class Counsel agree that none of the documents provided to them by Defendants shall be used for any purpose other than prosecution of this case.

14. Material terms. These terms shall be deemed the material terms to the final Settlement Agreement and Release to be executed by the Parties. These material terms are conditional upon, interdependent with, and inextricably intertwined with each other. In other words, each and every term of this Agreement is a material term, and all such terms are interrelated with, dependent upon, and non-severable from one another, including but not limited to all terms of monetary relief and non-monetary relief.

15. Exhibits. The terms of this Settlement Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. The exhibits to this Settlement Agreement are an integral part of this Settlement Agreement. Unless specifically provided otherwise in the exhibits to this Settlement Agreement, in the event of any

conflict between the Settlement Agreement and the exhibits, the terms of the Settlement Agreement shall control.

16. **Authority.** Undersigned counsel certify that they are authorized to agree to these terms on behalf of their respective clients.

17. **Drafting.** Each of the Parties has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction or interpretation of this Settlement Agreement, the Settlement Agreement shall not be construed for or against any of the Parties.

18. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means will constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means will be deemed to be their original signatures for any purpose whatsoever.

Date: 11/15/2018

ON BEHALF OF THE DEFENDANTS

By: 

Printed Name: Brian McAlpide

Title: CFO

ON BEHALF OF THE CLASS

By: 

Printed Name: Joshua Nolen

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JOSHUA NOLEN, on behalf of himself)
and all others similarly situated,)
)
Plaintiff,)
)
v.)
)
FIREBIRDS OF OVERLAND PARK,)
L.L.C. and FIREBIRDS)
INTERNATIONAL, INC.,)
)
Defendants.)

Case No. 2:17-cv-02237-JWL-JPO

CLASS ACTION
COLLECTIVE ACTION

PROPOSED ORDER GRATING PRELIMINARY APPROVAL OF SETTLEMENT

1. The above entitled matter came before the undersigned on the Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement. The Court, having carefully reviewed the proposed Class Action Settlement Agreement (“Settlement Agreement”), and the Unopposed Motion in Support, hereby finds as a preliminary matter that the Settlement Agreement is a fair, adequate, and reasonable resolution of a bona fide dispute in contested litigation.

2. The Court further finds that the classes as defined in the Settlement Agreement should be certified for the purposes of settlement.

3. Because the Court finds that at this stage the settlement if fair, adequate, and reasonable and that class certification for the purposes of settlement is appropriate, the Court further ORDERS that:

4. Plaintiffs’ Motion for Preliminary Approval of Class Settlement, for Certification of Settlement Class, and for Permission to Disseminate Notice is GRANTED.

5. Joshua Nolen is appointed as Class Representative.

6. The Hodgson Law Firm, LLC and The Law Offices of Phillip Murphy. are appointed as Class Counsel.

7. The Parties are directed to proceed with the administration of the settlement as provided by the terms of the Settlement Agreement, and in particular:

- The parties shall provide all necessary information to the Third Party Administrator;
- The Third Party Administrator shall disseminate Notice to the class in substantially the same format as provided to this Court attached to Plaintiffs' Motion for Preliminary Settlement Approval;
- The Notice Period shall close sixty days after the mailing of notice. All requests for exclusion, objections, and claim forms must be postmarked or returned by this date;
- Class Counsel shall file their motion for final settlement approval within 28 days of the close of the notice period; and
- The Court will hold its final approval herein on INSERT DATE 2018 at __ am/p.m.

It is so ORDERED this ____ day of INSERT, 2018.

EXHIBIT B

NOTICE OF CLASS ACTION SETTLEMENT

TO: «FIRST- NAME» «LAST- NAME»

You are receiving this notice because you worked as a server at a Firebirds Restaurant between May 12, 2014 and [November/December] __, 2018. **YOU are entitled to benefits in a settlement in the action titled *Nolen, et al. vs. Firebirds International, Inc.***

YOUR ESTIMATED SETTLEMENT AMOUNT: \$XXX

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

This is not a solicitation from a lawyer. A Court has authorized this notice.

**YOU MUST MAKE YOUR DECISION ON OR BEFORE [INSERT
60 DAYS FROM MAILING]**

Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

A SUMMARY OF YOUR RIGHTS AND CHOICES:

There are both federal and state claims in this lawsuit. The federal claims are under the **FLSA** and the state claims are under the **state law** from the state where you resided during your employment with Firebirds.

You May:	Effect of Choosing the Option:	Due Date:
<i>Do Nothing</i>	<ul style="list-style-type: none"> • You will receive at least [\$XXX.XX]* • You will release your state law claims (outlined in Question 9 of this Notice) and be bound by the terms of this settlement. • You will give up your right to sue Firebirds for your state law claims. 	<p><u><i>None. You do not need to do anything to receive a settlement payment. However, the payment may be lower than it would be if you were to submit a claim form.</i></u></p>
<i>Submit the Attached Consent Form</i>	<ul style="list-style-type: none"> • You will receive at least \$XXX.XX.* • You will also receive an additional payment in the amount of \$XXX.XX. The amount of this payment is based on your length of employment as a server within the relevant period and your state's tip credit minimum wage. • You will release your federal FLSA and your state law claims (outlined in Question 9 of this Notice) and be bound by the terms this settlement. • You will give up the right to sue Firebirds for your FLSA claims or state law claims. 	<p><u><i>The Consent Form must be received by Class Counsel no later than [60 DAYS FROM DATE]</i></u></p> <p><u><i>NOTICE IS MAILED!</i></u></p>
<i>Exclude Yourself from the State Law Portion of the Settlement</i>	<ul style="list-style-type: none"> • You can elect to opt out this settlement and retain any legal rights you may have against Firebirds. • To exclude yourself from the settlement, you must send in a signed exclusion request. • If you exclude yourself, you will not receive payment pursuant to this settlement. 	<p><u><i>The Exclusion Request must be received by Class Counsel no later than [60 DAYS FROM DATE]</i></u> <u><i>NOTICE IS MAILED!</i></u></p>
<i>File Objection</i>	<ul style="list-style-type: none"> • If you do not exclude yourself from the settlement, you can remain a settlement class member and still write to the Court explaining why you disagree with the Settlement. 	<p><u><i>The Objection must be received by Class Counsel no later than [60 DAYS FROM DATE]</i></u> <u><i>NOTICE IS MAILED!</i></u></p>
<i>Appear at the Hearing</i>	<ul style="list-style-type: none"> • If you do not exclude yourself from the settlement, you can also ask to speak to the Court about the fairness of the Settlement. 	<p><u><i>The Written Notice must be received by Class Counsel no later than [60 DAYS FROM DATE]</i></u></p>

Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

- | | | |
|--|---|---|
| | <ul style="list-style-type: none"> You must send written notice of your desire to appear in advance. | <p><u>DATE NOTICE IS MAILED!</u></p> |
|--|---|---|

1. INTRODUCTION

The purpose of this Notice is to: (i) inform you of the existence of a settlement between Plaintiff and Firebirds International, Inc. (“Firebirds”) for minimum wage and overtime compensation pursuant to the Fair Labor Standards Act (“FLSA”) and various state wage and hour laws, (ii) to advise you that you may be entitled to benefits under this settlement, (iii) to inform you of your legal rights and options in this settlement, and (iv) to instruct you on the procedure for participating in this settlement. You have been sent this Notice because employment data provided by FIREBIRDS indicates that you may have worked as a server at a Firebirds Restaurant during the relevant time period.

2. DESCRIPTION OF THE LAWSUIT

Firebirds Restaurants are owned by Firebirds, International, Inc (“Firebirds”). In 2017 a lawsuit was filed in federal court in Kansas, alleging that servers at Firebirds Restaurants may not have been properly paid for all time worked. The lawsuit alleges that FIREBIRDS’s pay practices violated the Fair Labor Standards Act (“FLSA”) and various state wage and hour laws. The lawsuit is before the Honorable Holly Teeter in the United States District Court for the District of Kansas, at Kansas City, Missouri, under the title *Josh Nolen, et al. vs. Firebirds International, Inc.* The lawsuit applies to employees who are or were employed by FIREBIRDS in the position of SERVER while working at a Firebirds Restaurant during the relevant period.

FIREBIRDS has denied and continues to deny all of the allegations in Plaintiff’s petition and denies it violated the FLSA or any applicable state or federal laws. FIREBIRDS maintains that servers were properly paid for their hours worked. The Court has not decided who is right and who is wrong, or weighed the arguments of either side. The parties, however, agreed to a settlement.

You are entitled to participate in the settlement in exchange for a release of all federal, state and local wage and hour claims you may have arising from your employment in the above position.

3. SUMMARY OF THE SETTLEMENT

To settle this case, FIREBIRDS agreed to pay up to a total of \$2,500,000 (“Gross Settlement Fund”), inclusive of all alleged unpaid wages, liquidated damages, penalties, interest, costs, and attorneys’ fees. If you choose to participate in this settlement, you will receive the amount listed on page 1, **before taxes**.

4. YOUR SETTLEMENT AMOUNT

Your individual settlement amount is based on a formula that took into Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

consideration a number of factors, including your length of employment as a server within the relevant period, your state's tip credit minimum wage, and the claims asserted in the lawsuit. Considering these factors your individual settlement amount was calculated, and is free and clear of attorneys' fees and litigation costs.

If the Court approves the settlement and all other conditions of the Final Settlement Agreement and Release are satisfied, a portion of your settlement payment will be reported as wages for tax purposes and you will receive an IRS Form W-2 for this portion of the payment. Tax withholdings for wage payments will be deducted from this first check amount. The second check represents the other portion of your settlement payment and will constitute payment for alleged liquidated damages, interest, and penalties, and will be reported on an IRS Form 1099. You shall be solely responsible for the payment of any local, state, or federal taxes resulting from or attributable to the payments received under this settlement. You should consult a tax preparer if you have any tax-related questions.

You will have 90 days to cash your settlement checks after they are issued.

Any uncashed checks will be voided after 90 days. After that, you will be unable to obtain payment. It is important that you inform the settlement administrator if you have made a claim but not received your check.

5. ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

Plaintiffs' Counsel are asking the Court to award them one-third of the total settlement for attorneys' fees in addition to the litigation costs they have paid to litigate the case. Such fees and costs payments will be subject to the Court's approval. ***Please note, these amounts have already been deducted from the total settlement amount and your settlement amount listed above will not be subject to any further deductions for attorneys' fees or costs.***

In addition, the named Class Representative and the first Opt-In Plaintiff joining the case intend to seek a service award from the Court in an amount not to exceed \$30,000.00 total for their service and work helping the attorneys prepare the case for trial. ***Again, these amounts have already been deducted from the total settlement amount and your settlement amount listed above will not be subject to any further deductions for service awards.***

6. NO RETALIATION IS PERMITTED

If you are a current employee of FIREBIRDS, you will not be retaliated against for joining this case. Under federal law, it is illegal for FIREBIRDS to terminate you or retaliate against you in any fashion because you have joined and/or participated in this lawsuit and/or settlement.

7. EFFECT OF ARBITRATION AGREEMENT

Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

If you signed an arbitration agreement with Firebirds, **that agreement does not apply to this settlement. You may still receive your share of the settlement, even if you signed or otherwise agreed to the arbitration agreement.**

8. APPROVAL OF THE SETTLEMENT AND FAIRNESS HEARING

The settlement is subject to Court approval and satisfaction of all conditions set forth in the Final Settlement Agreement filed with the Court. Plaintiff's Counsel and Defendant will jointly ask the Court on or before **[INSERT date of hearing]** to finally approve the settlement. The Court will hold a hearing to determine whether the settlement is fair, reasonable, and adequate and should be approved. ***You are not required or expected to attend the hearing, but have the opportunity to do so if you choose.***

The final approval hearing will be held **[INSERT]** at the United States District Court for the District of Kansas, Bob Dole U.S. Courthouse, 500 State Ave, Kansas City, KS 64106, Courtroom **8B**.

If the Court approves the settlement and if all conditions set forth in the Final Settlement Agreement and Release are satisfied, FIREBIRDS will deliver all settlement funds to the Settlement Administrator for distribution to Settling Plaintiffs pursuant to the terms of the Settlement Agreement.

If the Court does not approve the proposed settlement, the case will proceed as if no settlement has been attempted. In that event, FIREBIRDS retains the right to contest whether this case can be maintained as a class action and to contest the merits of the claims being asserted by the Plaintiff in this action. If the settlement is not approved, there can be no assurance that the class will recover the amount provided for in this settlement, or anything at all.

9. YOUR RIGHTS AND OPTIONS IN THIS SETTLEMENT

You may do nothing, withdraw consent ("opt out"), or object to this settlement.

Option A: Return the attached Claim Form, and receive your settlement allocation.

In order to receive your allocation under this settlement you **MUST POSTMARK OR RETURN YOUR CLAIM FORM** on or before **[INSERT 60 days from mailing]**

By choosing this option, you agree not to sue FIREBIRDS for any violation of federal, state, or local wage and hour laws arising from your employment by FIREBIRDS as a server working at a Firebirds Restaurant through the Effective Date of the Settlement. For this reason, it is important that you read the Release attached to this Notice carefully and in its entirety.

Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

Option B: Do nothing, release your state wage claims.

If you choose to do nothing, you will abandon your rights to pursue any claims brought under State or Local wage law, and you will receive no compensation from this settlement.

Option C: Reject your settlement amount and opt out of this case.

If you choose to reject your settlement amount and opt out of this case, you must provide written notice of your rejection to the Settlement Administrator and it must be postmarked or received by **[60 days from mailing] at 5:00 pm Central Time**. If you timely reject your settlement, your claims will be dismissed by the Court without prejudice. If you reject your settlement amount, you may not be represented any longer by the attorneys in this case unless they agree to a new representation of you.

Option D: Object to the terms of the settlement.

If you are a member of the Settlement Class and you do not reject your settlement and opt out of the suit, you may object to the terms of the settlement. If you object and the settlement is approved, you will be barred from bringing your own individual lawsuit asserting claims related to the matters referred to in the lawsuit, and you will be bound by the final judgment and release and all Orders entered by the Court. You may, but need not, enter an appearance through counsel of your choice. If you do, you will be responsible for your own attorneys' fees and costs.

If you object to the settlement, you must, on or before [60days from mailing Notice] serve upon The Hodgson Law Firm LLC, 3699 SW Pryor Rd., Lee's Summit, MO 64082 (class counsel), and Justin Keith, Greenberg Traurig, One International Place, Suite 2000, Boston, MA 02110. (counsel for FIREBIRDS), a written objection including: (a) your full name, address and telephone number, (b) the approximate dates of your employment with FIREBIRDS, and your job title(s) while employed with FIREBIRDS, (c) a brief written statement of all grounds for the objection accompanied by any legal support for your objection, (d) copies of any papers, briefs or other documents upon which the objection is based, (e) a list of all persons who will be called to testify in support of the objection, (f) a statement of whether you intend to appear at the Fairness Hearing, and (g) your signature, even if you are represented by counsel. If you intend to appear at the Fairness Hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the Fairness Hearing. Settlement Class members who do not timely make their objections in this manner will be deemed to have waived all objections and shall not be heard or have the right to appeal approval of the settlement.

10. SCOPE OF RELEASE

If you return a claim form you consent to remain a Claimant in the above-captioned lawsuit and to participate in the settlement of this action. In exchange for your settlement Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

payment, you agree to release and waive claims against Firebirds International, Inc., its owners, stockholders, predecessors, successors, assigns, and all their agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under or in concert with any of them from any and all wage and hour claims or causes of action, including but not limited to any claim for violations of federal, state, or other wage and hour laws or common law claims that were asserted in, arise out of, or are related to the subject matter of the lawsuit while employed in the SERVER position at any time through the Effective Date of the Settlement, including but not limited to claims for minimum wages, overtime, nonpayment of wages, meal or rest periods, paid and unpaid time off, reimbursement of expenses, waiting time penalties, unfair business practices, manner, method, amount or timing of any wage or benefit claimed to be due and any other pay practices of any kind.

If you do not return a claim form but also do not opt out of the settlement, you will release and waive claims against Firebirds, International, Inc., its owners, stockholders, predecessors, successors, assigns, and all their agents, directors, officers, employees, representatives, attorneys, parent companies, divisions, subsidiaries, affiliates, benefit plans, plan fiduciaries and/or administrators, and all persons acting by, through, under or in concert with any of them from any and all state wage and hour claims or causes of action, including but not limited to any claim for violations of state, or other wage and hour laws or common law claims that were asserted in, arise out of, or are related to the subject matter of the lawsuit while employed in the SERVER position at any time through October 22, 2018, including but not limited to claims for minimum wages, overtime, nonpayment of wages, meal or rest periods, paid and unpaid time off, reimbursement of expenses, waiting time penalties, unfair business practices, manner, method, amount or timing of any wage or benefit claimed to be due and any other pay practices of any kind.

11. YOUR RESPONSIBILITIES

It is your responsibility to keep the Settlement Administrator and Class Counsel informed of any change of address. You must act within the time periods set out in this Notice. The time periods will be strictly enforced. Failure to carry out any of these responsibilities could result in your failure to receive a settlement check. **Note: It is suggested that you keep proof of returning the claim form in a timely manner, including a return receipt request.** You may confirm receipt of your claim form with the Settlement Administrator.

12. QUESTIONS REGARDING THIS NOTICE

If you have any questions regarding this notice, you can contact the Settlement Administrator, [insert third party] at [insert toll free number] or by emailing your question to [insert TPA dedicated case email address].

13. LEGAL COUNSEL

The Attorneys representing Plaintiff in this matter are as follows:
Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

Michael Hodgson, Attorney

The Hodgson Law Firm, LLC
3699 SW Pryor Rd
Lee's Summit, MO 64082
Phone: (816) 600-0117
Email: mike@thehodgsonlawfirm.com

Phillip Murphy, Attorney

Law Office of Phillip Murphy
4717 Grand Ave, Suite 250
Kansas City, MO 64112
Phone: (913) 661-2900
Email: phillip@phillipmurphylaw.com

Questions? Visit www.WEBSITE.com or call [insert TPA toll free number]

EXHIBIT C

NOLEN V. FIREBIRDS INTERNATIONAL, INC. CLAIM FORM FOR SETTLEMENT PURPOSES

I hereby consent to join the FLSA Collective in the lawsuit styled *Nolen, et al. v. Firebirds International, Inc., et al.*, Case No. No. 2:17-cv-02237 (D. Kan.). I hereby knowingly and voluntarily release Defendant Firebirds, International, Inc. and its successors and assigns (“Defendant”), from/for all known and unknown claims for overtime compensation, unpaid wages, and minimum wages, liquidated damages, penalties, and interest under the FLSA, 29 U.S.C. § 201, *et. seq.*, arising from my employment with Defendant as a Server up to October 22, 2018.

Date: _____

Signature

Print Name

Information Below Will Be Redacted in Filings with the Court. Please Print or Type.

Address: _____

City, State Zip: _____

Best Phone Number(s): _____

Email: _____

Return this form by [60 DAYS FROM MAILING]

CLAIMS ADMINISTRATOR CONTACT INFORMATION

<<Employee # - Last Name, First Name>>

EXHIBIT D

To exclude yourself from the Rule 23 State Class, you must submit a Request for Exclusion in writing to the Settlement Administrator, with a postmark date of no later than **INSERT DATE**. Your Request for Exclusion must include your name and address, and must state: (1) that you are requesting to be excluded from the Parties' Settlement in the case entitled, Nolen, *et. al.* v. Firebirds International, Inc., *et al.*, No. 2:17-cv-02237 (D. Kan.); and (2) that you understand that by excluding yourself from the Settlement, you will receive no funds in conjunction with the settlement of this Litigation.

EXHIBIT E

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JOSHUA NOLEN, on behalf of himself)	
and all others similarly situated,)	
)	Case No. 2:17-cv-02237-JWL-JPO
Plaintiff,)	
)	
v.)	CLASS ACTION
)	COLLECTIVE ACTION
FIREBIRDS OF OVERLAND PARK,)	
L.L.C. and FIREBIRDS)	
INTERNATIONAL, INC.,)	
)	
Defendants.)	

GENERAL RELEASE

Pursuant to the Settlement Agreement in the matter captioned Nolen, *et al.* v. Firebirds International, Inc., *et al.*, No. 2:17-cv-02237 (D. Kan.) dated November 15, 2018 (“the Nolen Settlement Agreement”), Joshua Nolen (“Employee”) hereby grants this GENERAL RELEASE to Firebirds International, Inc. and its predecessors, successors and assigns, its current and former direct and indirect parents, affiliates, subsidiaries, divisions, and related business entities (“Firebirds”).

In consideration of the promises made by Employee in the Nolen Settlement Agreement and this General Release and contingent upon his execution of and compliance with this General Release, Employee shall receive the benefits set forth in the Nolen Settlement Agreement, including payment of any court-approved Service Award.

General Release. In consideration for the benefits described in the Nolen Settlement Agreement, Employee, for himself, his heirs, executors, administrators, and assigns, hereby releases, waives, and forever discharges any and all claims or liabilities against Firebirds, its health or welfare benefits plans, affiliates, predecessors, successors or assigns, and their respective officers, directors, trustees, employees, representatives and agents, from any and all claims or liabilities of whatever kind or nature which he has ever had or which he now has, known or unknown, including, but not limited to, contract claims; claims for bonuses, severance pay, employee or fringe benefits; and claims based on any state or federal wage, employment, or common laws, or amendments thereto, including, but not limited to: (i) any claim under the Employee Retirement Income Security Act, 29 U.S.C. 1001 *et seq.*, the Family Medical and Leave Act, 29 U.S.C. § 2611, *et seq.*, or COBRA, (ii) age discrimination claims under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 *et seq.*, as modified by the Older

Worker Benefit Protection Act, (iii) any race, color, religion, sex, or national origin discrimination claims under Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000(e) *et seq.*, (iv) any claim under the Americans with Disabilities Act (ADA), 42 U.S.C. § 12102 *et seq.*, (v) any claim under the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, (vi) any claims under the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, the Kansas Minimum Wage and Maximum Hours Law, Discrimination Against Military Personnel Act, Discrimination Against Employees who are Victims of Domestic Violence or Sexual Assault, or any claims for wrongful discharge, discrimination, retaliation, harassment, breach of contract, intentional or negligent infliction of emotional distress, defamation, interference with contract, or any other cause of action based on federal, state, or local law or the common law, whether in tort or in contract, (vii) any other claims related to or arising out of his former employment relationship with Firebirds, or (viii) any claims for damages due to personal injury or for compensatory or punitive damages.

Notwithstanding the foregoing, Employee acknowledges that he is not waiving and is not being required to waive any right that cannot be waived under law, including his right to file a claim based on events occurring after the date he signs the Agreement, and his right to file a charge or participate in an administrative investigation or proceeding of the Equal Employment Opportunity Commission or any other government agency prohibiting waiver of such right; *provided, however,* that Employee hereby disclaims and waives any right to share or participate in any monetary award resulting from the prosecution of such charge or investigation, excepting only any benefit or remedy to which Employee is or becomes entitled pursuant to Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Nondisclosure of Confidential Information. In further consideration of the promises and consideration of set forth in the Nolen Settlement Agreement, Employee further agrees as follows:

(a) As of the execution of this General Release, Employee covenants and agrees to treat as confidential and not to negligently or intentionally disclose to any third party and not to use for any purpose whatsoever all information, plans, records, trade secrets, business secrets, and confidential or other data (including without limitation the identity of the customers and vendors of Firebirds or any affiliate of Firebirds, the prices they obtain or have obtained from the sale of their services and products or at which they sell their services or products, or any of their marketing, pricing or sales strategies or development, technological or management efforts) of Firebirds or any affiliate of Firebirds, submitted to Employee or compiled, received, or otherwise discovered by Employee from time to time in the course of his employment by Firebirds or any affiliate of Firebirds. This obligation of confidentiality shall not apply to information that has become generally available to the public other than as a result of a disclosure by Employee or by any third party subject to an obligation of confidentiality. Nothing in this General Release intended to restrict Employee's truthful cooperation with any governmental investigation or inquiry.

(c) Notwithstanding the foregoing, nothing contained in this Agreement is intended to prohibit or restrict Employee in any way from: (i) making any disclosure of

information required by law, rule or regulation; (ii) providing information to Firebirds' legal, compliance, or human resources officers; (iii) making any disclosure of information in any litigation, arbitration, or other proceeding between Employee and Firebirds; or (iv) exercising rights under the Defend Trade Secrets Act of 2016, which provides that an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

Non-disparagement. Employee agrees not to make critical, negative or disparaging remarks about Firebirds, its officers, directors, and representatives, including but not limited to comments about any of Firebirds' products, services, or business practices.

Controlling Law. This General Release shall be governed by and construed in accordance with the laws of the State of North Carolina, as they are applied to contracts made and to be wholly performed in that state, regardless of choice of law principles to the contrary. In addition, employee consents to the jurisdiction of any North Carolina court in any dispute arising from this Agreement.

Effective Date. This General Release shall be effective and enforceable upon its execution by Employee.

IN WITNESS WHEREOF, Employee has executed this General Release as of the day and year first written above.

Joshua Nolen

Date

EXHIBIT F

REMINDER POSTCARD

Joshua Nolen, et. al. v. Firebirds International, et. al., Civil Action No. 2:17-cv-02337
United States District Court for the District of Kansas

Re: *Firebirds* Class Action Settlement Deadline to Respond: **30 DAYS FROM MAILING**

A Notice Packet was recently mailed to you about the *Firebirds* Class Action Settlement. The packet contained a Notice of Proposed Class Action Settlement and Claim Form, which can also be found on the Class Action Website (**WEBSITE**). Our records indicate that you have not submitted a Claim nor made a request for exclusion (“opt-out”) from the Settlement. To be eligible to receive the full Settlement payment or any upward adjustment in benefits going forward if you are still receiving benefits, you must submit a Claim. You can file a Claim online at the Class Action Website or you can mail a completed Claim Form to the Class Administrator at the following address:

CLASS ADMINISTRATOR CONTACT INFORMATION

If you no longer have your Claim Form, you can obtain another copy by going to the Class Action Website or by contacting the Class Administrator toll-free at **ADMINISTRATOR PHONE NUMBER**. If you mail your Claim Form, it must be **postmarked on or before 30 days from mailing**; **if you file electronically, it must be filed by Claim Deadline**.

If you want to exclude yourself from the Class (“opt out”), you must send a letter by First-Class Mail to the Class Administrator stating that you “request exclusion from the Class in the *Firebirds* Class Action Settlement.” Your letter must include your name, address, telephone number, email address and your signature. You must submit your exclusion request so that it is **postmarked no later than DATE**.

If you want to object to the terms of the Settlement Agreement, you must write to the Court setting out your objection. Your signed letter must include your name, address, telephone number, and email address, and it must also set out in clear language all of the reasons why you object to the proposed Settlement. The letter must be sent to: **COURT CONTACT INFORMATION**; and to Class Counsel, Michael Hodgson, The Hodgson Law Firm, LLC, 3699 SW Pryor Rd, Lee’s Summit, MO 64082; and to Defendant’s Counsel, **GREENBERG TRAUIG CONTACT INFORMATION** and be **postmarked or received in hand no later than objection date**.

If you do nothing, you will receive a reduced payment, and you will not be able to challenge *Firebirds* under State Wage Law for claims regarding whether you have been paid properly.

If you believe that you have already submitted a Claim, please immediately call the Class Administrator toll-free at **ADMINISTRATOR PHONE NUMBER**.