

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

KINGBORN MORRIS, RAFAEL MATEO, and DARNELL  
PIERCE, individually and on behalf of all other persons  
similarly situated who were employed by ALLE  
PROCESSING CORP., SCHREIBER PROCESSING  
CORP., ALBERT WEINSTOCK, EDWIN WEINSTOCK,  
SAM HOLLANDER and MENDEL WEINSTOCK,

Case No: 08-cv-4874 (JMA)

Plaintiffs,

-against-

ALLE PROCESSING CORP., SCHREIBER PROCESSING  
CORP., ALBERT WEINSTOCK, EDWIN WEINSTOCK,  
SAM HOLLANDER and MENDEL WEINSTOCK,

Defendants.

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiff Rafael Mateo (“Named Plaintiff”), individually and on behalf of all other persons similarly situated who comprise the “Class” (as hereinafter defined and also referred to herein as “Plaintiffs”) and Defendants Alle Processing Corp., Schreiber Processing Corp., Albert Weinstock and Edwin Weinstock, (“Defendants”) (Named Plaintiff and Defendants, singularly “Party” and collectively, the “Parties”).

**RECITALS AND BACKGROUND**

A. Named Plaintiff filed a Class Action Complaint on December 3, 2008 in the United States District Court for the Eastern District of New York, which was assigned docket number 08-cv-4874 (the “Action”).

B. Defendants, while continuing to deny any wrongdoing or liability, nevertheless have agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and to be completely free of any further controversy with respect to the claims that were asserted or could have been asserted in, or relate in any way whatsoever to, the Action. Nothing in this agreement constitutes an admission of liability by any of the Defendants with respect to any of the claims asserted in the Action.

C. Plaintiffs’ Counsel, having analyzed and evaluated the merits of the claims made against Defendants and the impact of this Agreement on Named Plaintiff and Class Members, and based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of continued litigation, including the possibility that the Action, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiffs’ 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 Named Plaintiff and Class Members.

D. Named Plaintiff and Defendants, by and through their respective counsel, have engaged in extensive in-person settlement discussions, and with the assistance of a mutually-retained mediator in connection with the potential resolution of the Action. Named Plaintiff, the Class (as hereinafter defined) and Defendants—subject to the approval of the Court—have elected to settle the Action pursuant to the terms set forth in this Agreement, which shall be submitted to the Court for approval through the mechanisms set forth below.

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

## 1. DEFINITIONS

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

**1.1 Agreement.** “Agreement” means this Settlement Agreement and Release.

**1.2 Authorized Claimant.** “Authorized Claimant” means Named Plaintiff, a Class Member, or the authorized legal representative of such a Class Member, who timely files a Claim Form (and does not file an Opt-Out Statement) in accordance with the terms of this Agreement, and who is therefore entitled to receive a Settlement Check. Claimants who previously accepted an Offer of Judgment pursuant to Federal Rule of Civil Procedure 68, and were compensated, are excluded from the definition of “Class” “Class Members” and “Authorized Claimants.”

**1.3 Bar Date.** “Bar Date” means the date by which any Class Member who wishes to qualify as an Authorized Claimant must file a Claim Form. Subject to the Court’s approval and the provisions of Section 2.12, the Bar Date shall be (1) no later than sixty (60) days after the initial mailing of Notice by the Settlement Claims Administrator, or (2) if Class Members did not receive the Notice or were unable to file the Claim Form within sixty (60) days due to change of address, military service, hospitalization or other circumstances deemed extraordinary by the Mediator Martin Scheinman, Esq. (the “Mediator”), the Court, and/or by stipulation of the Parties, an additional thirty (30) days will be given to such Class Members to file a Claim Form.

**1.4 Claim Form.** “Claim Form” means the form annexed to the Declaration of Lloyd Ambinder as Exhibit “C” (“Ambinder Dec.”) and which will be published with the Notice of Proposed Settlement of Class Action Lawsuit (Ambinder Dec. “B”) that Class Members must complete, sign, and return by United States Postal Service First Class Mail (“USPS”) postmarked on or before the Bar Date.

**1.5 Class and Class Member.** “Class” or “Class” (collectively) and/or “Class Member” (individually) means: all individuals, including Opt-in Plaintiffs, employed by

Defendants or Related Entities between December 3, 2002, through March 31, 2016, inclusive, who performed work as food service employees and in other related trades for Alle Processing Corp.'s food processing facility in Maspeth, New York. The Class does not include any corporate officers, shareholders, directors, clerical employees, rabbinical employees, salaried supervisory employees, and administrative employees of Alle Processing Corp. In addition, the Class does not include any individual who previously accepted an Offer of Judgment, and was compensated, from Defendants pursuant to Federal Rule of Civil Procedure 68.

- 1.6 **Class Counsel.** "Class Counsel" or "Plaintiffs' Counsel" means LaDonna Lusher, Esq. and Lloyd Ambinder, Esq., Virginia & Ambinder, LLP, 40 Broad Street, New York, New York 10004.
- 1.7 **Class List.** "Class List" means a list in electronic format, preferably in Excel, that includes the names, last known addresses, last four digits of the social security numbers and weeks worked during the Settlement Period for each Class Member. Class Counsel agrees not to use this information to for any purpose other than to effectuate the terms of the settlement. Class Counsel shall take all reasonable steps to maintain the confidentiality of the Class List including not divulging the information contained in the Class List to Named Plaintiff or Class Members, and to destroy this information within thirty (30) days of the Final Effective Date, as defined below. Defendants shall use all reasonable efforts to produce a complete Class List.
- 1.8 **Costs and Fees.** "Costs and Fees" means Class Counsels' attorney's fees, costs, and expenses, including, but not limited to the Settlement Claims Administrator's professional service fees and costs.
- 1.8 **Court.** "Court" means the United States District Court for the Eastern District of New York.
- 1.9 **Days.** "Days" means calendar days.
- 1.10 **Defendants.** "Defendants" means Alle Processing Corp., Schreiber Processing Corp., Albert Weinstock, Edwin Weinstock, Sam Hollander, and Mendel Weinstock.
- 1.11 **Defendants' Counsel.** "Defendants' Counsel" means Jeffery Meyer, Esq., ~~Sanjay Nair, Esq.~~ and Aaron Solomon, Esq., Kaufman Dolowich & Voluck, LLP, 135 Crossways Park Drive, Suite 201, Woodbury, NY 11797.
- 1.12 **Employer Payroll Taxes.** "Employer Payroll Taxes" means all taxes and withholdings an employer is required to make arising out of or based upon the payment of employment compensation in this Action, including FICA, FUTA, and SUTA obligations.
- 1.13 **Fairness Hearing.** "Fairness Hearing" means the hearing before the Court relating to the Application for Final Approval of the Settlement.

- 1.14 Final Order.** “Final Order” means the Order entered by the Court after the completion of the Fairness Hearing, approving the terms and conditions of this Agreement, authorizing distribution of the Settlement Checks and Service Awards, approving distribution of Costs and Fees, and dismissing the Action with prejudice.
- 1.15 Final Effective Date.** Provided no appeal is timely filed, and no application has been made for reconsideration or rehearing, the “Final Effective Date” means thirty (30) days after the Court has entered a Final Order. If such an appeal or application for reconsideration or rehearing is timely filed, the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Final Order has been finally dismissed; (2) the Final Order has been affirmed on appeal in a form substantially identical to the form of the Final Order entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Order has expired and no such petition for review has been filed; and (4) if a petition for review of an appellate decision affirming the Final Order is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Order in a form entered by the Court.
- 1.16 Final Settlement Amount.** “Final Settlement Amount” means the sum of the Net Settlement Fund plus all Court-approved Costs and Fees, Settlement Claims Administrator fees and costs, Service Awards.
- 1.17 Gross Settlement Fund.** “Gross Settlement Fund” means Five Million Two Hundred Thousand Dollars and Zero Cents (\$5,200,000.00), for complete and final resolution of the Action.
- 1.18 Individual Gross Amount.** “Individual Gross Amount” means the amount allocated to each individual Class Member prior to any withholdings for taxes, Service Awards, Costs and Fees.
- 1.19 Individual Net Amount.** “Individual Net Amount” means the amount allocated to the individual Authorized Claimants after set-offs for taxes, Service Awards, and Costs and Fees.
- 1.20 Named Plaintiff.** “Named Plaintiff” refers to Rafael Mateo.
- 1.21 Net Settlement Fund.** “Net Settlement Fund” means the aggregate balance to be distributed to all Authorized Claimants of their Individual Net Amounts. Defendant Alle Processing Corp. shall pay the employer’s share of withholding taxes.
- 1.22 Opt-In Plaintiff.** “Opt-In Plaintiff” means any individual who filed a consent to join pursuant to § 216(b) of the Fair Labor Standards Act.
- 1.23 Notice or Notices.** “Notice” or “Notices” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit as authorized in the Preliminary Approval Order annexed to the Ambinder Dec. as Exhibits “B” and “D”.

- 1.24 Objector.** “Objector” refers to an individual Class Member who properly, and timely files an objection to this Agreement.
- 1.25 Opt-out Statement.** “Opt-out Statement” refers to a written, signed statement that an individual Class Member or that individual’s authorized representative has elected to exclude himself or herself (“Opt-out”) from the settlement and from the Class.
- 1.26 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court: Class; (i) preliminarily approving the terms and conditions of this Agreement; (ii) directing the manner and timing of providing Notice to the Class Members; and (iii) setting the dates and deadlines for effectuating settlement, including the Bar Date, date of the publication of Notice, and the Fairness Hearing date. The Proposed Preliminary Approval Order is annexed to the Ambinder Decl. as Exhibit “D.”
- 1.27 Qualified Settlement Fund.** “Qualified Settlement Fund” or “QSF” means the non-interest bearing bank account controlled by an authorized Settlement Claims Administrator for the purpose of distributing the Final Settlement Amount in accordance with this Agreement. The QSF will be controlled by the Settlement Claims Administrator subject to the terms of this Agreement, the Preliminary Approval Order, and the Final Order, as well as any other or further Orders of the Court
- 1.28 Released Class Claims.** “Released Class Claims” shall become effective upon payment of the Final Settlement Amount, and means any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues arising in any way during the period from December 3, 2002 through March 31, 2016, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including unknown claims, that could have been, or might be asserted in any court, tribunal or proceeding, against Released Entities and that arise out of, relate to, or concern the allegations in the Action, including, but not limited to, statutory, constitutional, contractual or common law claims for unpaid regular or overtime wages, improper notice, spread of hours, unpaid gratuities, service charges, prevailing wage, living wage, tips, any related wage and hour claims, interest on such claims, penalties, damages, liquidated damages, attorney’s fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief. This release includes any such claims under the New York State Labor Law and any other state or local law, but not under the Fair Labor Standards Act.
- 1.29 Released Authorized Claimant Claims.** “Released Authorized Claimant Claims” shall become effective upon payment of the Final Settlement Amount, and means any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues arising in any way during the Settlement Period, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including unknown claims, that could have been, or might be asserted in any court, tribunal or proceeding, against Released Entities and that arise out of, relate to, or concern the allegations in the Action, including, but not

limited to, statutory, constitutional, contractual or common law claims for unpaid regular or overtime wages, improper notice, spread of hours, unpaid gratuities, service charges, prevailing wage, living wage, tips, any related wage and hour claims, interest on such claims, penalties, damages, liquidated damages, attorney's fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief. This release also includes any such claims under the New York State Labor Law, and the Fair Labor Standards Act.

- 1.30 Released Entities.** "Released Entities" means Defendants Albert Weinstock, Edwin Weinstock, Sam Hollander, and Mendel Weinstock, their respective estates, heirs, executors, administrators, agents, successors, and assigns, along with Defendants Alle Processing Corp., Schreiber Processing Corp., any other Related Entities as defined in Section 1.31, as well as their individual and collective subsidiaries, parents, affiliates, partners (general and limited), members, lenders (including any administrative agent or collateral agent for such lenders), creditors, predecessors, and successors of the foregoing, as well as the officers, managers, owners, directors, employees, agents, representatives, attorneys, trustees, executors, heirs, spouses, transferees and assigns of any and all of them, in their individual and/or representative capacities.
- 1.31 Related Entities.** "Related Entities" means Defendants and their affiliated entities named in the Action including Meal Mart, Mon Cuisine, Amazing Meals, and New York Kosher Deli.
- 1.32 Service Award.** "Service Award" means that portion of the Final Settlement Amount, if any, requested by the Plaintiff Rafael Mateo and approved by the Court as a reasonable incentive award to Rafael Mateo for representing the interests of the Class Members.
- 1.33 Settlement Claims Administrator.** "Settlement Claims Administrator" means the qualified administrator referred to in Section 2.1
- 1.34 Settlement Checks.** "Settlement Checks" means checks issued to Authorized Claimants for their Individual Net Amount.
- 1.35 Settlement Period.** "Settlement Period" means December 3, 2002, through and including the date of the Preliminary Order.

## **2. PRELIMINARY APPROVAL AND PROCEDURE**

### **2.1 Settlement Claims Administrator.**

- A. **Retention.** Within fifteen (15) days after the filing of a Preliminary Approval Motion (as defined below), Class Counsel shall engage a Settlement Claims Administrator that is agreeable to Defendants.
- B. **Funding Settlement Claims Administrator.** The Settlement Claims Administrator's costs and expenses shall be paid by Class Counsel as approved by the Court.

- C. **Responsibilities of Settlement Claims Administrator.** The Settlement Claims Administrator shall be responsible for: (i) preparing, printing and disseminating to Class Members the Notice and Claim Forms; (ii) performing a skip trace and resending, within three (3) days of receipt, any Notice and Claim Form returned without a forwarding address, or resending to those with a new forwarding address; (iii) responding to inquiries from respective parties regarding requests or communications made by the Parties; (iv) monitoring and maintaining a telephone number with telephone answers until the Final Effective Date or the termination of this Agreement, whichever comes first; (v) promptly furnishing to counsel for the Parties copies of any requests for exclusion, objections or other written or electronic communications from Class Members that the Settlement Claims Administrator receives; (vi) receiving, retaining and reviewing the Claim Forms submitted by Class Members; (vii) keeping track of requests for exclusion or objection, including maintaining the original envelope in which the request or objection was mailed; (viii) responding to inquiries of Class Members regarding procedures for filing objections, Opt-out Statements, and Claim Forms; (ix) referring to Class Counsel all inquiries by Class Members or Authorized Claimants regarding matters not within the Settlement Claim Administrator's duties specified herein; (x) responding to inquiries of counsel for the Parties relating to the Settlement Claims Administrator's duties specified herein; (xi) promptly apprising counsel for the Parties of the activities of the Settlement Claims Administrator; (xii) maintaining adequate records of its activities, including the dates of the mailing of Notices and mailing and receipt of Claim Forms, returned mail and any and all other actual or attempted written or electronic communications with Class Members; (xiii) confirming in writing to counsel for the Parties and the Court its completion of the administration of the claims process; (xiv) timely responding to communications from the Parties and their counsel; (xv) providing Defendants with the Authorized Claimants IRS W-9 and W-4 tax forms; and (xvi) such other tasks as the Parties mutually agree or which the Court in the Action is pending directs.
- D. **Access to the Settlement Claims Administrator.** The Parties will have equal access to the Settlement Claims Administrator. Class Counsel and Defendants agree to use their best efforts to cooperate with the Settlement Claims Administrator and provide reasonable assistance in administering the settlement.

## 2.2 Preliminary Approval Motion.

- A. Upon complete execution of this Agreement, Class Counsel shall file a Motion for Preliminary Settlement Approval ("Preliminary Approval Motion"). In connection with the Preliminary Approval Motion, Class Counsel will submit to the Court: (1) the proposed Notice; (2) the proposed Claim Form; (3) the proposed Preliminary Approval Order; and (4) an executed version of this Agreement.

- B. In the Preliminary Approval Motion, Class Counsel shall inform the Court of the intended process to obtain a “Final Order” in accordance with the Court-approved schedule, so that at the completion of the Fairness Hearing, the Court may, among other things: (1) approve the settlement as fair, adequate and reasonable; (2) incorporate the terms of the releases, as set forth in Section 3.7 hereof; (3) dismiss the Action with prejudice; (4) award Class Counsel’s Costs and Fees, including, but not limited to, the Settlement Claims Administrator’s professional fees and costs, (5) award the Service Award; and (6) authorize distribution and payment to the Authorized Claimants.
- C. Plaintiffs will provide a “Microsoft Word” version of the Preliminary Approval Motion, including the Memorandum of Law and Declaration in Support, to Defendants’ Counsel reasonably in advance of any deadline to file the same for review and comment and upon completion of such review, file the motion as “unopposed.” Defendants reserve the right to oppose such application, however, if it is inconsistent with the terms and conditions of this Agreement.

### 2.3 Notice and Claim Forms to Class Members.

- A. **Class List to Counsel.** Within thirty (30) days of the Preliminary Approval Order being signed by the Court, Defendants’ Counsel shall provide the Settlement Claims Administrator and Class Counsel with the Class List. Class Counsel warrants that they will not use this information for any other purpose other than to effectuate settlement.
- B. **Notice.** The Notice shall be published in English and Spanish and will inform Class Members about this settlement including information regarding the opportunity to object to, opt-out of, or participate in the settlement, and to appear at the Fairness Hearing. Within fifty (50) days of the signing of the Preliminary Approval Order, or as otherwise ordered by the Court, the Settlement Claims Administrator shall mail to all Class Members, via First Class United States Mail, the Court-approved Notices, IRS W-4 and W-9 tax forms, and Claim Forms. Class Counsel shall also publish a static link to the Notice and Claim Form on their firm’s website during the notice and claim period. Class Counsel shall not publish and/or publicize the Notice in any manner other than specifically set forth herein. Other than necessary disclosures made to the Court and as may be required or mandated by any federal, state, or local law or regulation, or any disclosures made pursuant to the terms of this Agreement, the fact and terms of this Settlement, the terms of this Agreement and the exhibits hereto, the Parties’ settlement negotiations, and all related information has been and shall be held strictly confidential by Class Counsel, except as to disclosures to Class Counsel’s, financial advisor(s) for tax purposes or financial planning, or to any taxing authority or government office or agency, and shall not be directly or indirectly disclosed to any third parties (including the media, by press release or otherwise) or included on any websites, provided that if Class Counsel receives inquiries from the media, Class Counsel shall state only that the Action has been resolved. Notwithstanding the foregoing, Class Counsel may communicate with Class



Members for the purpose of implementing this settlement and may respond to inquiries from Class Members. Nothing herein shall limit the ability of Class Counsel to communicate with governmental authorities regarding this Agreement, if Class Counsel is legally required to do so, in which case Class Counsel shall give Defendants seven (7) business days' notice before any such communication occurs unless Class Counsel is given less than seven (7) business days' notice of the required communication, in which event Class Counsel will give notice to Defendants as soon as is reasonably possible. If Class Counsel violates the terms of this Section prior to Final Approval, Defendants may rescind the Settlement, rendering it null and void and will no longer be bound to any of its terms.

- C. **Skip Trace and Re-mailing.** If a Claim Form is returned as undeliverable, the Settlement Claims Administrator shall take all reasonable steps to obtain a current address, including one skip-trace, and shall re-mail the Claim Form to such address. The Settlement Claims Administrator shall also mail or email a Notice and Claim Form to any Class Member who requests them after the initial mailing of the Notice and before the Bar Date. The Settlement Claims Administrator will notify Class Counsel and Defendant's Counsel of any Notices and Claim Forms returned as undeliverable after the first mailing, including those returned as undeliverable after any subsequent mailing. All costs of locating Class Members will be paid from the QSF.
- D. **Claim Forms.** To be deemed an Authorized Claimant, Class Member must submit a completed Claim Form, and a completed IRS W-4 and W-9 tax form with a valid Social Security number or Tax Identification Number. The Authorized Claimant will not be barred from participating in the settlement so long as he or she ultimately produces a valid Social Security number or Tax Identification Number within one (1) year of the Bar Date. If the Authorized Claimant fails to produce a valid Social Security number or Tax Identification Number within one (1) year of the Bar Date, his or her claim shall terminate and the funds shall revert back to Defendants.
- E. **Bar Date.** To be deemed an Authorized Claimant, Class Members must postmark a completed and signed Claim Form and additional information submitted as required pursuant to Section 2.5(D) to the Settlement Claims Administrator by the Bar Date. The Bar Date shall be (i) sixty (60) days from the date of the initial mailing or as otherwise set by the Court, and (ii) an additional thirty (30) days later for any Class Members who can evidence that s/he did not receive the Notice, or could not to file a timely Claim Form due to extraordinary factors such as change of address, military service, or hospitalization as may be deemed by the by the Mediator, the Court, and/or by stipulation of the Parties. If an envelope does not contain a postmark, it shall be deemed received on the date that the Settlement Claims Administrator stamps the envelope or Claim Form as "received."

## **2.4 Access to Class Member Information.**

- A. **Employment Information.** No later than thirty (30) days after the Preliminary Approval Order is signed by the Court, and to the extent not already produced in discovery, Defendants shall provide Class Counsel with the total number of weeks worked by every member of the Class during the December 3, 2002 through March 31, 2016, inclusive. Such information will be used exclusively by the Parties and the Settlement Claims Administrator to calculate each Class Member's Individual Gross Amount.

## **2.5 Opt-out: Class Members who Opt-out.**

- A. Class Members who elect to opt-out of the settlement as set forth in this Agreement must mail, via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Claims Administrator that states he or she is opting out of the settlement ("Opt-out Statement"). In order to be valid, the Opt-out Statement must include the name, address, and telephone number of the Class Member, and an express statement indicating his or her intention to opt-out, such as: "I opt-out of the Alle Processing wage and hour settlement." To be effective, an Opt-out Statement must be postmarked by United States Postal Service on or before the Bar Date.
- B. The latest date to opt-out of the settlement ("Opt-out Period") shall be on or before the Bar Date.
- C. The Settlement Claims Administrator shall stamp the received date on the original of each Opt-out Statement and send copies of each Opt-out Statement to Class Counsel and Defendant's Counsel not later than ten (10) days after receipt. The Settlement Claims Administrator will, within twenty-four (24) hours of the end of the Opt-out Period, send a final list of all Opt-out Statements to Class Counsel and Defendants' Counsel by both email and First Class Mail. The Settlement Claims Administrator shall retain the stamped originals of all Opt-out Statements and originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Claims Administrator is relieved of its duties and responsibilities under this Agreement.
- D. Any Class Member who does not timely submit an Opt-out Statement pursuant to this Agreement will be deemed to have accepted the terms of this Agreement, will be bound by the Final Order, and will have all Released Class Claims released and dismissed with prejudice. Other than the Named Plaintiff, only those Class Members who timely complete and return a Claim Form postmarked or received by the Settlement Claims Administrator by the Bar Date, and otherwise comply with Section 2.5, will be deemed Authorized Claimants. Defendants shall have no obligation to pay or fund any amounts allocated to Class Members who do not submit a timely Claim Form as set forth in this Agreement, and otherwise comply with Section 2.5, unless otherwise ordered by the Court or agreed upon by the Parties.

## 2.6 Objectors: Authorized Claimants Who Object to Settlement.

- A. Class Members who wish to present objections to the proposed settlement any Fairness Hearing must first do so in writing and file a valid Claim Form and satisfy applicable requirements of Section 2.5 by the Bar Date. The Claim Form must be signed before a Notary Public. To be considered, such statement must be mailed to the Settlement Claims Administrator via First Class Mail, postage pre-paid, and postmarked by the United States Postal Service on or before the Bar Date. The statement must include all reasons for the objection, and any supporting documentation. The objecting Class Member shall include the following statement in the written objection: “This statement is truthful and accurate to the best of my knowledge.” The statement must also include the name, address, and telephone number of the Class Member making the objection. The Settlement Claims Administrator will stamp the date received on the original and send copies of each objection, supporting documents, as well as a copy of the Notice and Claim Form mailed to the Objector, to Class Counsel and Defendants’ Counsel by email delivery no later than three (3) days after receipt of the objection. The Settlement Claims Administrator shall also file the date-stamped originals of any and all objections with the Court.
- B. Objector has the right to appear at any Fairness Hearing either in person or through counsel hired and paid for 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. An Objector may withdraw his or her objections at any time. ~~Any Class Member who has elected to opt-out of the Settlement may not submit objections to the settlement.~~

## 2.7 List & Calculations to Counsel.

- A. No later than ten (10) days after the Bar Date, the Settlement Claims Administrator shall provide: (a) a list of all Authorized Claimants, (b) a list of all Objectors, and (c) a list of all Class Members who timely submitted an Opt-out Statement. Throughout the period of claims administration, the Settlement Claims Administrator shall provide reports to the Parties upon their request regarding: (i) the status of the mailing of the Notices and Claim Forms to Class Members; (ii) the status or progress of the claims administration process; and (iii) any other aspect of the claims administration process. Beginning the second Friday after Notice is mailed to Class Members, the Settlement Claims Administrator shall provide counsel for the Parties a weekly update on the number of Authorized Claimants, Objectors, and Opt-outs.
- B. Within thirty (30) days prior to the Fairness Hearing, Class Counsel or the Settlement Claims Administrator shall provide notice to Defendants’ Counsel of the Final Settlement Amount, together with a Microsoft Excel spreadsheet that designates each Authorized Claimant, his/her allocated share, and the appropriate totals and calculations to confirm the Final Settlement Amount (“Notice of Final Settlement Amount”).

## 2.8 Fairness Hearing and Application for Final Approval and Dismissal.

- A. After the Bar Date, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents for Final Approval of the settlement (“Application for Final Approval”). The Application for Final Approval may contain a report from the Settlement Claims Administrator, an application for attorney’s fees, and supporting affirmations and documents from Class Counsel regarding the fairness, adequacy and reasonableness of the settlement or any aspect related to this Agreement. The Application for Final Approval may also include a proposed Final Order.
- B. At the Fairness Hearing and through the Application for Final Approval, the Parties may request that the Court, among other things: (1) approve the settlement and Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted-out of the settlement and enjoin all Class Members who do not opt-out from pursuing and/or seeking to reopen claims that have been released by this Agreement; (2) order distribution of the Settlement Checks to the Authorized Claimants and any Service Awards to the Named Plaintiff as described in this Agreement; (3) order the costs and professional fees of Class Counsel to be paid, including the costs and fees incurred in the engagement of the Settlement Claims Administrator; (4) dismiss this Action with prejudice, and release the Released Class Claims; (5) enter a Final Order in accordance with this Agreement; and (6) 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.

## 2.9 Termination of Agreement.

### A. Grounds and Procedure for Settlement Termination.

1. **Opt-out Provision.** Defendants have the right to terminate this Agreement if: (i) greater than five percent (5%) of the individuals on the Class List submit an Opt-out Statement; or (ii) if individuals with respect to greater than five percent (5%) of the total payroll for the Class during the Settlement Period submit an Opt-out Statement, whichever is less. The opt-out Plaintiffs that are Class Members shall be required to commence a new action within forty five (45) days of the Bar Date or their new action shall not be deemed to relate back to the filing of the Complaint in this Action.

2. **Continued Mediation.** Upon receiving notice, if any, that the Final Settlement Amount exceeds Two Million Two Hundred Thousand Dollars and Zero Cents (\$2,200,000.00), the Parties shall convene a conference with Mediator who shall make a binding decision upon the Parties about an adjustment, if any, to ~~amounts allocated for Individual Gross Amounts~~, Costs and Fees, and/or additional contributions, if any, by the Defendants. However, under

no circumstances shall the Gross Settlement Fund exceed \$5,200,000.00. The parties acknowledge that any binding decision made by the ~~arbitrator~~mediator shall remain subject to the Court's approval. –

3. 3.—Termination of this Agreement shall be accomplished by email or facsimile transmitted to the non-terminating Party at least five (5) calendar days prior to the scheduled Fairness Hearing to Defendants' Counsel or Class Counsel.

4. Individual Gross Amounts paid to the Authorized Claimants shall not be reduced proportionately to pay Costs and Fees in the event the aggregate value of these claims exceeds \$3,770,000.00.

**C. Effect of Termination.** Termination shall have the following effects:

1. In the event this Agreement is terminated, subject to the provisions of Section 2.9(A)(1), the Parties will continue with the litigation as of the date of this Agreement with all rights and defenses intact as if no agreement had occurred. Plaintiffs may take all steps to enforce the judgment obtained in this Action as against Alle Processing Corp., to the same extent that they would have had as if no Agreement had occurred. Nothing contained in this Agreement is intended or shall be deemed to affect in any way the liens or security interests (including perfection or priority) held by the lenders (or their agents) against property of the Defendants or the Related Entities.

2. Defendants shall have no obligation to make any payments to any Party, Class Member, Authorized Claimant, Class Counsel or otherwise, other than as otherwise would be required had this Agreement not been executed. However, the Party terminating this Agreement shall be responsible for paying the costs, fees and expenses of the Settlement Claims Administrator incurred until the mailing of the termination notice is complete. If the Agreement is terminated on consent of all Parties, the Parties shall share (on a 50/50 basis between Named Plaintiff and Defendants) the costs incurred by Settlement Claims Administrator and mediator for all services rendered in connection with this Agreement, including the notice of termination to the Class.

3. The Parties shall advise the Court of the termination, and shall apply to the Court to have a single approved notice mailed to Class Members advising them of the termination. If approved by the Court, then the Settlement Claims Administrator shall provide a Court-approved notice to Class Members and any Authorized Claimants that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Class Members or Authorized Claimants under the Agreement. Such notice shall be mailed by the Settlement Claims Administrator via First Class United States Mail.

4. If settlement is terminated, Defendants retain the right to: (1) contest the merits of the claims being asserted in the Action; and (2) oppose contentions by the Named Plaintiff and Class Members and raise all other rights and/or defenses.

5. If this settlement is not consummated for any reason, including: (1) a termination under this Agreement; (2) a ruling by the Court declining to enter a Preliminary Approval Order or Final Order substantially in the form submitted by the Parties (including a reversal and/or modification on appeal of the Court's Preliminary Approval Order or Final Order); or (3) for any other reason not presently contemplated, then the Parties shall first endeavor to resolve the matter jointly and in good faith, including jointly or individually seeking reconsideration of the Court's ruling if necessary or involving a mediator if practical. To the extent such efforts fail, the Parties may continue to litigate the Action as if there was no Agreement.

6. By operation of entry of the Final Order and payment of the Final Settlement Amount to the Settlement Claims Administrator, all Released Authorized Claims and Released Class Claims shall be deemed forever and fully released, discharged, and merged into this Agreement. In the event Plaintiffs initiate proceedings against the Released and/or Related Entities to enforce this Agreement for non-payment of the Final Settlement Amount, minus any and all amounts previously paid, the Released and Related Entities shall not raise timeliness or laches as a defense to oppose such enforcement.

7. A Confession of Judgment as against (and signed solely on behalf of) Alle Processing Corp. is annexed hereto as Exhibit "1" and made a part of this Agreement. The Confession of Judgment shall expire after the Final Settlement Amount has been fully paid in accordance with the payment terms in this Agreement or any subsequent agreement extending the payment date to pay any portion of the Final Settlement Amount. In addition, the Confession of Judgment shall be immediately returned to Defendants' Counsel via certified mail or Federal Express once the Final Settlement amount has been fully paid. Defendants shall deliver the executed Confession of Judgment with the Final Settlement Amount to Class Counsel no less than three (3) days prior to the Fairness Hearing. To the extent that the Final Settlement Amount is not determined prior to the Fairness Hearing, the executed Confessional of Judgment shall be delivered on a date agreed to by the parties or as otherwise directed by the Court.

### **3.0 SETTLEMENT TERMS AND DUE DILIGENCE REVIEW**

#### **3.1 Amount.**

Subject to provisions of Section 2.9, above, Defendant agrees to a Gross Settlement Fund of Five Million Two Hundred Thousand Dollars and Zero Cents (\$5,200,000.00), which shall fully resolve and satisfy any and all amounts to be paid to all Authorized Claimants for releasing claims, and any Court-approved Costs and Fees, Service Awards, and Settlement Administration Costs and Fees.

- A. **Funding the QSF.** Defendant shall fund the QSF in the following payments:

Defendants shall pay the Final Settlement Amount to the Settlement Claims Administrator within thirty (30) days of the Final Effective Date and no earlier than November 15, 2016.

- B. **Reserve Fund.** Defendants shall set aside Ten Thousand Dollars and Zero Cents (\$10,000.00) to cover any errors or omissions (e.g. individual Authorized Claimants who dispute the amounts allocated to them, or individuals who allege they should be part of the Class) (the "Reserve Fund"). The unused portion of the Reserve Fund shall be distributed to the Authorized Claimants. Any Class Member or individual who desires to challenge any error or omission shall provide a signed, sworn written statement to Class Counsel, the Settlement Claims Administrator, or Defendants' Counsel as to why such error or omission should be corrected, along with supporting documents, if any. The Claimant shall include the following statement in the written objection: "This statement is truthful and accurate to the best of my knowledge." Any recipient of such a statement must provide a copy to all Parties to this Agreement and the Settlement Claims Administrator within three (3) days by email. Defendants' Counsel shall notify the challenging individual, through Class Counsel, within twenty (20) days whether such error or omission will be corrected and paid from the Reserve Fund. To the extent the Parties are unable to agree on an error or omission, such error or omission may be submitted to a mediator mutually agreed upon by the Parties for final resolution.

**3.2 Payments from the QSF.** Defendants shall make the following payments from the QSF, once the QSF is funded as described in Section 3.1(A):

- A. Within twenty (20) days of the QSF being funded as described in Section 3.1, the Settlement Claims Administrator shall: (i) mail all Settlement Checks to Authorized Claimants; (ii) mail any and all Service Awards to the Plaintiff Rafael Mateo; and (iii) wire-transfer payment to Class Counsel all Court-approved Costs and Fees. Delivery of settlement checks shall be accomplished in the manner specified in Section 3.6(A).
- B. Any amounts representing uncashed Settlement Checks, Service Awards, the Reserve Fund, or any other amount remaining in the QSF shall be returned to Defendant Alle Processing Corp. six (6) months after the mailing.

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

- A. At the Fairness Hearing and in connection with the Application for Final Approval, Class Counsel will petition the Court for an award for Costs and Fees of no more than Twenty-Seven and One-Half Percent (27.5%) of the Gross Settlement Fund (\$1,430,000.00) which shall include professional service fees and costs incurred in connection with this Action, Settlement Claim Administrator's fees and the Service Award to Plaintiff Mateo. Defendants will not oppose this application, including any appeal or request for reconsideration so

long as the Final Order does not result in an award of Costs and Fees that is higher than Twenty-Seven and One-Half Percent (27.5%) of the Gross Settlement Fund (\$1,430,000.00).

- B. The substance of Class Counsel's application for attorney's Costs and Fees is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The decision terminating any proceeding related to Class Counsel's application for Costs and Fees shall not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval.
- C. Defendants shall fund deposit the Court-approved Costs and Fees representing Class Counsel's costs, fees, and expenses, including the fees and costs of the Settlement Class Administrator incurred by Class Counsel, in the manner described in Section 3.1(A).

#### **3.4 Service Awards.**

- A. In return for services rendered to Class Members, Authorized Claimants, or the Class, at the Fairness Hearing, Named Plaintiff Rafael Mateo may apply to the Court to receive a Service Award of no more than a cumulative total of Five Thousand Dollars and Zero Cents (\$5,000.00) from the QSF.
- B. The application for Service Awards is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The Court's decision on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Application for Final Approval.
- C. Defendants shall fund the Court-approved Service Awards in the manner described in Section 3.1(A). Defendants shall not pay any more than these amounts.

#### **3.5 Net Settlement Fund and Allocation to Class Members.**

- A. **Calculation.** Authorized Class Claimant's Gross Individual Amount shall be computed as follows:

Authorized Class Claimants employed between December 3, 2002 and December 31, 2012, inclusive, shall receive \$30.13 for every reported work week. This weekly figure represents a total weekly payment comprised of the sums of: (i) \$9.69, representing 1.5 hours per week of spread of hours compensation; (ii) \$7.03, representing 0.5 hours of NYLL Section 230 prevailing wage compensation for the classification of Cook Level 1, less amounts paid; and (iii) \$13.41, representing 1.8481 hours of "straight time" uncompensated work.

Authorized Class Claimants employed between January 1, 2013 and November 1, 2015, inclusive, shall receive \$20.44 for every reported work week. This weekly



figure represents a total weekly payment comprised of: (i) \$7.03, representing 0.5 hours of NYLL Section 230 prevailing wage compensation for the classification of Cook Level 1, less amounts paid; and (ii) \$13.41, representing 1.8481 hours of “straight time” uncompensated work.

Authorized Class Claimants employed between November 2, 2015 and March 31, 2016, inclusive, will receive a total payment of \$250.00. If the Authorized Class Claimant worked both prior to and after November 1, 2015 he or she will be entitled to only the greater of: (i) \$250.00; or (ii) the amount calculated pursuant to the formula set forth in this Section for work performed on or prior to November 1, 2015.

Defendants enter into this Agreement to calculate Class Members’ Gross Individual Amounts in the manner set forth above for the purposes of settlement only. Nothing above or otherwise herein shall be construed as an admission that Defendants were required to pay NYLL Section 230 prevailing wage compensation, or living wage compensation pursuant to New York City Administrative Code §6-109 *et. seq.*, at the rate of a Cook Level 1 classification for any Class Members, or any other amount of wages, as set forth in this Section, at any period of time.

- B. **Tax Treatment.** Fifty percent (50%) of each Authorized Claimant’s Individual Net Amount will be taxed as wages and fifty percent (50%) will be taxed as 1099-Misc non-wage income representing liquidated damages and interest. By submitting a Claim Form, each Authorized Claimant agrees to defend and hold Defendants harmless, up to the amount of his or her Individual Gross Amount, for ~~the Authorized Claimant’s share of any unpaid payroll taxes any unexpected tax obligations and related expenses that Defendants might incur because of this settlement~~ and/or the failure of any Authorized Claimant to pay taxes on any income he or she might receive as a participant in the settlement.

### 3.6 Settlement Check Distribution.

- A. The Settlement Claims Administrator shall be responsible for generating checks or wire transfers to pay Service Awards, Authorized Claimants, and Costs and Fees, inclusive of the Class Administrator’s fees. The checks shall be delivered to Class Counsel who shall make arrangements to have the checks mailed by the Settlement Claims Administrator or picked-up at Class Counsel’s office.

### 3.7 Release of Claims and Covenant Not to Sue.

- A. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, each individual Class Member who does not timely opt-out pursuant to this Agreement, each individual Authorized Claimant, and the Named Plaintiff, on behalf of themselves, their heirs, executors, administrators, successors, assigns, estates, representatives, subsidiaries, affiliates, and agents forever and fully releases and discharges Released Entities from all Released Class Claims.
- B. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, each individual Authorized Claimant on behalf of themselves, their heirs, executors, administrators, successors, assigns, estates, representatives, subsidiaries, affiliates, and agents forever and fully releases and discharges Released Entities from all Released Class Claims and Released Authorized Claims.
- C. Unless a Named Plaintiff opts-out of this settlement pursuant to the terms of this agreement, then by operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, regardless of whether the Named Plaintiff timely submit a Claim Form, the Named Plaintiff forever and fully release and discharge Released Entities from all Released Class Claims and Released Authorized Claimant Claims as well as any other claim of any kind under federal, state, or local law based on events that took place from the beginning of time through the Final Effective Date.
- D. The Class Members and Authorized Claimants expressly acknowledge that: (i) the facts and perceived circumstances to which the Released Class Claims and Released Authorized Class Claims relate, may hereafter turn out to be other than or different from the facts and perceived circumstances now known or believed to be known; (ii) the Class Members and the Authorized Claimants expressly assume the risk referred to in “(i)” of this provision; and (iii) the Class Members and Authorized Claimants agree that the Released Class Claims and/or Released Authorized Claimant Claims shall be in all respects effective in accordance with their terms and shall not be subject to termination or rescission by reason of such different facts or perceived circumstances.
- E. Except as provided in this Agreement, upon payment of all Costs and Fees as approved by the Court, Class Counsel, on behalf of the Class Members and Authorized Claimants, irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Released Entities for attorney’s fees, expenses, disbursements and all other Costs and Fees associated with Class Counsel’s representation of the Class. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final and complete payment of all attorney’s fees, expenses, disbursements and all other Costs and Fees associated with Class Counsel’s representation in the Action.

- F. By operation of the entry of the Final Order, and except as to such rights or claims as may be created by this Agreement, Released Entities shall be deemed to have and shall fully, finally, and forever released, relinquished, and discharged Plaintiffs, each and all of the Class Members, each and all Authorized Claimants, and Class Counsel from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of this Action or the Released Class Claims and the Released Authorized Class Claims, as may be applicable.

### **3.8 Non-Admission of Liability.**

- A. By entering this Agreement, Defendants in no way admit any violation of law or any liability (including with respect to any trade classifications) whatsoever to the Named Plaintiff and/or the Class Members, 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 action litigation other than for purposes of settlement. Rather, Defendants enter into this Agreement to avoid further protracted litigation and to fully and finally resolve and settle all disputes with the Named Plaintiff and Class Members. Settlement of the Action, negotiation and execution of this Agreement, and all acts performed and documents executed pursuant to or in furtherance of this Agreement or the settlement: (1) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in any and all complaints or other papers filed by Plaintiffs in the Action; and (2) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or omission on the part of Defendants in any civil, criminal, administrative, or arbitral proceeding. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret, or enforce the terms of the Agreement.

### **4.0 MISCELLANEOUS PROVISIONS.**

- 4.1 Cooperation between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court's approval of this Agreement and all of its terms. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 4.2 No Assignment.** Class Counsel and Named Plaintiff, 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.

- 4.3 Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings among the Parties shall be deemed merged into this Agreement.
- 4.4 Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to Named Plaintiff and all Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns. Notwithstanding the passage of any legislation, bill, regulation, or other change in the law that may materially affect the rights of the Named Plaintiff and all Class Members in this Action, this Agreement is binding.
- 4.5 Survival.** The provisions of Sections 2.9(C) shall survive termination of this Agreement.
- 4.6 Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 4.7 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.
- 4.8 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the Court in which the Action was brought, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law shall govern.
- 4.9 Jurisdiction; Waiver of Jury Trial.** The Parties expressly agree to the exclusive jurisdiction of the Court in connection with any dispute regarding this Agreement. The Parties shall further request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby, except as otherwise stated in this Agreement. The Parties may not unilaterally petition the Court to increase the Defendants' payment obligations.
- 4.10 Waivers, etc. to Be in Writing.** No waiver, modification or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties and then only to the extent set forth in such written waiver, modification or amendment, subject to any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

- 4.11 When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 4.12 Facsimile and Email Signatures.** Any party may execute this Agreement by causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile or email to counsel for the other party. Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the party whose counsel transmits the signature page by facsimile or email.
- 4.13 Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 4.14 Consultation and Authority.** Counsel for the Named Plaintiff warrant and represent that they have consulted with Named Plaintiff and have full authority to enter into this Agreement on behalf of the Named Plaintiff and the Class.
- 4.15 Notice.** All other notices and documents set forth herein shall be delivered to counsel for Defendants, Jeffery A. Meyer, Esq., ~~Sanjay Nair, Esq.~~ and Aaron N. Solomon, Esq., Kaufman Dolowich & Voluck, LLP, 135 Crossways Park Drive, Suite 201, Woodbury, New York 11797; (516) 681-1100; facsimile (516) 681-1101, [jmeyer@kdvlaw.com](mailto:jmeyer@kdvlaw.com), ~~[snair@kdvlaw.com](mailto:snair@kdvlaw.com)~~, and [asolomon@kdvlaw.com](mailto:asolomon@kdvlaw.com), respectively, and Class Counsel Lloyd Ambinder, Esq., and Ladonna Lusher, Esq., Virginia & Ambinder, LLP, 40 Broad Street, New York, New York 10004, [lambinder@vandallp.com](mailto:lambinder@vandallp.com) and [llusher@vandallp.com](mailto:llusher@vandallp.com).
- 4.16 Amended Caption.** The caption shall be amended to remove the following parties from the caption: Defendants Sam Hollander and Mendel Weinstock, and Plaintiffs Kingborn Morris and Darnell Pierce.

**WE AGREE TO THESE TERMS,**

**Virginia & Ambinder, LLP  
For Named Plaintiff and the Class.**

By: \_\_\_\_\_  
**Lloyd Ambinder, Esq.**

Dated: \_\_\_\_\_

**Kaufman Dolowich & Voluck, LLP**

**For Defendants.**

**By:** \_\_\_\_\_  
**Jeffery A. Meyer, Esq.**

**Dated:** \_\_\_\_\_

4820-3682-4096, v. 2

**EXHIBIT 1**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

KINGBORN MORRIS, RAFAEL MATEO, and DARNELL PIERCE, individually and on behalf of all other persons similarly situated who were employed by ALLE PROCESSING CORP., SCHREIBER PROCESSING CORP., ALBERT WEINSTOCK, EDWIN WEINSTOCK, SAM HOLLANDER and MENDEL WEINSTOCK,

Case No: 08-cv-4874 (JMA)

Plaintiffs,

-against-

ALLE PROCESSING CORP., SCHREIBER PROCESSING CORP., ALBERT WEINSTOCK, EDWIN WEINSTOCK, SAM HOLLANDER and MENDEL WEINSTOCK,

Defendants.

**AFFIDAVIT OF CONFESSION OF JUDGMENT**

STATE OF NEW YORK                    }  
  }S.S.  
COUNTY OF KINGS                    }

THE UNDERSIGNED,

\_\_\_\_\_, being duly sworn, deposes and says:

1. I am employed by Alle Processing Corp. as \_\_\_\_\_. Alle Processing Corp. has a principal place of business at 5620 59<sup>th</sup> Street, Maspeth, New York, 11378. I have authority to sign on behalf of the Defendant, Alle Processing Corp. in the above-captioned action, and I am duly authorized to make this affidavit on the undersigned entity's behalf.

2. Defendant hereby confesses judgment, and authorizes entry of judgment against it in the sum of \_\_\_\_\_ Dollars and Zero Cents



(\$ \_\_\_\_\_), minus any payments already made pursuant to the terms of the Settlement Agreement and Release (the "Agreement") between Plaintiffs and Defendants in the above-captioned matter, together with interest under applicable federal law from the date of the default to the date of entry of judgment.

3. This confession of judgment is for a debt justly due to Plaintiffs pursuant to the Agreement dated May \_\_\_\_\_, 2016, and the Defendants' default in payment under the Agreement.

4. This confession of judgment may only be filed by Plaintiffs' counsel, Virginia & Ambinder, LLP, pursuant to the terms of the Agreement and, in particular, Section 2.9(C)(7).

**CONFESSION BY ALLE PROCESSING CORP.**

\_\_\_\_\_  
By:

Dated: May \_\_\_\_\_, 2016

**ACKNOWLEDGMENT**

On this \_\_\_\_\_ day of May, 2016 before me personally came \_\_\_\_\_, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing his name.

Sworn to before me

this \_\_\_\_\_ day of May 2016

\_\_\_\_\_  
Notary Public