

supported by a settlement agreement signed by the named Plaintiff and each of the opt-in Plaintiff[s] currently before the Court. They must also present evidence of the reasonableness of the \$1,000.00 incentive payment to Plaintiff Heath and a memorandum of law discussing the propriety of such a payment. Counsel for Plaintiffs shall also redact her time sheet to reflect only work performed for the Plaintiffs whose claims are to be resolved under the settlement agreement. Finally, the parties shall submit revised notice of settlement which includes the payments made to other Plaintiffs and the incentive payment to Heath.

Id. at 6.

Pursuant to these instructions, Plaintiffs hereby submit this renewed motion for approval of the proposed collective action settlement, specifically addressing each of the points raised by the Court, as set forth above. This motion incorporates by reference Plaintiffs' prior briefing in their initial Motion for Settlement Approval, and is supported by the following materials, as ordered by the Court:

Exhibit A The settlement agreement signed by named plaintiff Jason Heath and each of the opt-in plaintiffs currently before the Court.²

Exhibit B The declaration of Hillary Schwab and time sheet reflecting hours worked only for the plaintiffs whose claims are to be resolved under this proposed settlement.³

Exhibit C Revised notice of the settlement which includes reference to the payments made to the other plaintiffs and the incentive payment to named plaintiff Jason Heath.

In addition, Plaintiffs submit that the \$1,000 incentive payment to named plaintiff

² Two of the opt-in plaintiffs, namely, Sarah Jane Waltman and Amber Safari, have failed to return signed copies of the settlement agreement in time to accompany this filing. Plaintiffs' Counsel expects signed settlement agreements from both Ms. Waltman and Ms. Safari, however, and will submit the signature pages for these two opt-in plaintiffs via supplemental notice once they are in-hand.

³ This time sheet, which again shows only hours worked for the plaintiffs whose claims will be resolved in this settlement, was originally supported as "Exhibit 5" to Plaintiffs' prior motion for settlement approval. See docket no. 63, Exhibit 5. However, Plaintiffs' Counsel inadvertently neglected to mention that fact in the affidavit accompanying the time sheet. This point is clarified in the new affidavit submitted by Plaintiffs' Counsel in support of this renewed motion.

Jason Heath is reasonable and proper. Mr. Heath was an integral part of this case. He was one of the first individuals to contact Plaintiffs' Counsel concerning these potential claims against Hard Rock. Ex. B at ¶ 3. He assisted Counsel in drafting the complaint in this matter. Id. He actively participated in every stage of the litigation, including responding to 38 document production requests and 15 written interrogatories. Id. He submitted a sworn affidavit in support of Plaintiffs' motion for conditional certification. Id. He aided Plaintiffs' Counsel in preparing for mediation, including participating in several telephone interviews. Id. He also acted as a primary and most reliable contact person between Plaintiffs' Counsel and the opt-in plaintiffs and potential opt-in plaintiffs. Id. Given these efforts, it is plainly appropriate to compensate Mr. Heath for his time, efforts, and initiative with a modest incentive payment of \$1,000.

“Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.” Cook v. Niedert, 142 F.3d 1004 (7th Cir. 1998). Such payments are “commonly granted to encourage socially beneficial litigation and compensated named plaintiffs for expenses on travel, incidental costs, and their time.” Loudermilk Services, Inc. v. Marathon Petroleum Co., LLC, 623 F. Supp. 2d 713, 727 (S.D.W. Va. 2009). Significantly, courts have not hesitated to award incentive payments far greater than the amount at issue here to named plaintiffs who performed services comparable to Mr. Heath in other collective actions brought under the FLSA. For example, in Camp v. Progressive Corp., the district court approved a settlement of an FLSA overtime action and awarded incentive payments of \$10,000 to the named plaintiff; \$2,500 to any plaintiff who gave a deposition; and \$1,000 to any plaintiff who assisted in the

preparation of written discovery. 2004 WL 2149079, at *7 (E.D. La. 2004). Similarly, in Quintanilla v. A & R Demolition, Inc., the district court approved a settlement an FLSA claim for unpaid wages, including incentive payments of \$1,000 to each of the named plaintiffs to compensate them for the costs they incurred participating in the litigation. 2007 WL 5166849, at *3 (S.D. Tex. 2007). There the district court specifically noted that incentive payments were appropriately awarded in order to “compensate named plaintiffs for the services they provide and burdens they shoulder during litigation.” Id. In Bruner v. Sprint/United Management Corp., the district court approved settlement of an FLSA claim for failure to pay overtime and awarded the named plaintiff an incentive payment of \$5,000 based on his participation in discovery and his general assistance to counsel. 2009 WL 2058762, at *11 (D. Kan. 2009).

Accordingly, having addressed the Court’s concerns with respect to this settlement, and for all the reasons set forth here and in their original motion for settlement approval, Plaintiffs respectfully request that this Court approve the proposed settlement and proposed revised form of notice and claim form, attached as “Exhibit C,” and enter the order attached as “Exhibit D.”

Respectfully submitted,
JASON HEATH, ROBERT G. PIERCE,
AURELIA EISENZOPF, and all others
similarly situated,

By their attorneys,

/s/ Hillary Schwab
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Dated: September 30, 2011

CERTIFICATE OF CONFERENCE

I hereby certify that, pursuant to Local Rule 3.01(g), I conferred with counsel for the defendants, and they assent to the relief requested.

/s/ Hillary Schwab
HILLARY SCHWAB

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2011, a copy of this document was served by electronic filing on all counsel of record.

/s/ Hillary Schwab
HILLARY SCHWAB

at Foxwoods Casino in Connecticut (“Foxwoods Hard Rock Café”) and Defendants, subject to Court approval.

The Settling Parties do hereby agree to do all things and procedures necessary and appropriate to obtain approval of this Agreement in consideration for: (a) payment by Defendants of the consideration expressed herein subject to the terms, conditions and limitations of this Agreement; (b) the release and dismissal with prejudice of all claims relating to tip distribution practices at the Foxwoods Hard Rock Café during the Relevant Period by the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs who become Qualified Claimants; and (c) other valuable monetary and non-monetary consideration as set forth herein.

I. CONSENT TO COURT FACILITATED NOTICE

A. For settlement purposes only, the Settling Parties agree that the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs are similarly situated for purposes of 29 U.S.C. § 216(b) and consent to Court-facilitated notice to the Potential Opt-In Plaintiffs.

B. This Agreement is contingent upon approval by the Court and is entered into voluntarily by the Settling Parties for settlement purposes only. Defendants do not waive, and instead expressly reserve, their rights on the appropriateness of Court-facilitated notice pursuant to 29 U.S.C. § 216(b) should the Court not approve this Agreement.

C. The Settling Parties shall cooperate and present to the Court for its consideration in connection with the approval of the Settlement Agreement and Court-

facilitated notice competent evidence as may be requested by the Court under the appropriate standards for approving FLSA settlements and/or facilitated notice.

II. SETTLEMENT APPROVAL PROCEDURE

Within eleven (11) business days of execution of this Agreement by the Settling Parties' counsel of record, Counsel for the Plaintiff and Opt-In Plaintiffs shall file an assented-to motion for approval of this Agreement and the Notice of Settlement and Claim Form ("Notice of Settlement"), attached hereto as Exhibit A, advising Potential Opt-In Plaintiffs of material terms and provisions of this Agreement, the procedure for filing Claim Forms, and their rights with respect thereto.

III. MODE, CALCULATION AND TIMING OF PAYMENT OF CLAIMS

A. Notice of Claims

Within five (5) business days of the Court's approval of this Settlement Agreement, Defendants shall provide the Settlement Claims Administrator with an Excel chart listing the last known address, phone number, and Social Security number of the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs. Plaintiffs' Counsel shall also provide the Settlement Claims Administrator with any updated addresses for the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs. Prior to the mailing of the Notice of Settlement to the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs, the Settlement Claims Administrator shall attempt to confirm the accuracy of the names and addresses through the United States Post Office's National Change of Address database. Within twenty (20) calendar days of Court approval of this Agreement, the Settlement Claims Administrator shall mail the Notice of Settlement to

the best address identified using the National Change of Address database for the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs. If any such Notice of Settlement is returned as undeliverable for a Potential Opt-In Plaintiff, the Settlement Claims Administrator shall promptly attempt to locate such Potential Opt-In Plaintiff through an electronic search using the Social Security number and/or former address of that person and shall promptly mail an additional Notice of Settlement to each such person. Upon Plaintiffs' counsel's request, the Claims Administrator shall also mail an additional Notice of Settlement to addresses obtained by Plaintiffs' Counsel for any Potential Opt-In Plaintiff. The Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs will be provided with a summary of the basis for settlement in the Notice of Settlement and told that in order to receive any monetary proceeds of the settlement, they must mail a Claim Form so that it is received by the Settlement Claims Administrator on or before sixty (60) calendar days of the date the first Notice of Settlement was mailed to the Potential Opt-In Plaintiffs' last known address (the "Claim Bar Date"). The Settlement Claims Administrator shall provide redacted electronic copies of all Claim Forms to Plaintiffs' Counsel, who shall file the Claim Forms within fifteen (15) calendar days of the Claims Bar Date. The Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs who timely return a completed Claim Form will be considered "Qualified Claimants" entitled to receive their share of the Gross Settlement Fund as set forth on Exhibits B and C.

B. Defendants' Payment Obligations

On or before July 29, 2011, Defendants shall pay a total of Fifty Thousand Dollars (\$50,000.00) (the "Gross Settlement Amount") by wire transfer to a Depository Bank chosen by the Settlement Claims Administrator. Defendants shall also be responsible for the following additional payments, which will be paid separately by Defendants and will not be paid out of the Gross Settlement Amount: (1) all costs incurred by the Settlement Claims Administrator and all costs in connection with the Settlement Fund including, but not limited to, those related to notice, check cutting and mailing, claims processing, court filings, legal and accounting advice relating to the establishment of the Qualified Settlement Fund and tax treatment and tax reporting of awards to Plaintiffs and Qualified Claimants, preparation of tax returns (and the taxes associated with such tax returns as defined below); and (2) applicable federal, state and local taxes required to be withheld and/or paid by Defendants.

C. Settlement Claims Administration

On or before ten (10) business days after the execution of this Agreement, the Settling Parties shall jointly agree upon a firm to serve as Settlement Claims Administrator. In the event the Settling Parties cannot agree upon such a firm, their dispute shall be decided finally by the Mediator serving as an Arbitrator on the issue. The Settlement Claims Administrator shall be responsible for: (i) calculating the individualized settlement payments and tax withholding amounts for the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs; (ii) preparing, printing and disseminating to the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs the Notice of Settlement; (iii) copying counsel for all Parties on material correspondence and promptly

notifying all counsel for the Parties of any material requests or communications made by any Party; (iv) preparing, monitoring and maintaining a toll-free number with phone answerers until 130 calendar days after the mailing of checks to Qualified Claimants; (v) receiving and reviewing the Claim Forms submitted by Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs to determine eligibility for payment; (vi) determining the Settlement Payment for each Qualified Claimant in accordance with this Settlement Agreement; (vii) mailing the settlement checks to Qualified Claimants; (viii) wiring Plaintiffs' Counsel's attorneys' fees, expenses, and costs and mailing Incentive Payments and Settlement Payments in accordance with this Settlement Agreement and Order of the Court; (ix) paying all payroll tax obligations of Defendants in accordance with this Settlement Agreement; (x) issuing W-2 and 1099 Forms for all amounts paid to the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs; (xi) ascertaining current address and addressee information for each Notice of Settlement returned as undeliverable; (xii) responding to inquiries of the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs regarding the terms of settlement and procedures for filing Claim Forms; (xiii) referring to Plaintiffs' Counsel all inquiries by the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs regarding matters not within the Settlement Claim Administrator's duties specified herein; (xiv) responding to inquiries of Plaintiffs' or Defendants' Counsel; (xv) promptly apprising counsel for the Parties of the activities of the Settlement Claims Administrator; (xvi) maintaining adequate records of its activities, including the dates of the mailing of the Notice of Settlement and mailing and receipt of Claim Forms, returned mail and other communications and attempted

written or electronic communications with the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs; (xvii) confirming in writing to Plaintiffs' and Defendants' Counsel and the Court its completion of the administration of the settlement; (xviii) timely responding to communications from the Parties or their counsel; and (xix) such other tasks as the Parties mutually agree.

In addition, no later than ten (10) calendar days after the Claims Bar Date, the Settlement Claims Administrator shall provide Plaintiffs' and Defendants' Counsel with a list of Qualified Claimants who timely filed a Claim Form. Throughout the period of claims administration, the Settlement Claims Administrator will provide reports to the Parties upon request by either Party, regarding the status of the mailing of the Notice of Settlement to Class Members, the claims administration process, the receipt of Claim Forms, and distribution of the Settlement Checks or any other aspect of the claims administration process.

Upon conclusion of the administration process, the Settlement Claims Administrator shall maintain an electronic copy of all Claim Forms received by the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs and shall provide the original Claim Forms to Counsel for Defendants.

D. Creation and Implementation of a Qualified Settlement Fund

The Gross Settlement Amount will be deposited in an account titled Foxwoods Hard Rock Café Settlement Fund (the "Settlement Fund"), intended by the parties to be a "Qualified Settlement Fund" as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq. Upon transfer

of the Gross Settlement Amount, Defendants shall relinquish any rights it might have had to the Settlement Fund, except as provided elsewhere in this Agreement. The Gross Settlement Amount is inclusive of payment for: (1) all Qualified Claimants; (2) any incentive payment approved by the Court for the Named Plaintiff; and (3) all attorneys' fees, costs, and litigation expenses approved by the Court, including those in connection with securing Court approval of this Settlement Agreement, the claims process and implementing this Settlement Agreement, other than fees and costs awarded in connection with any successful proceeding to enforce the terms of this Settlement Agreement. Not included in the Gross Settlement Fund are the following payments for which Defendants shall be responsible: (1) all costs incurred by the Settlement Claims Administrator and all costs in connection with the Settlement Fund including, but not limited to, those related to notice, check cutting and mailing, claims processing, court filings, legal and accounting advice relating to the establishment of the Qualified Settlement Fund and tax treatment and tax reporting of awards to Plaintiffs and Qualified Claimants, preparation of tax returns (and the taxes associated with such tax returns as defined below); and (2) applicable federal, state and local taxes required to be withheld and/or paid by Defendants.

The Settlement Claims Administrator shall serve as Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Fund. The Settlement Claims Administrator shall act in a manner necessary to qualify the Settlement Fund as a "Qualified Settlement Fund"

under Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg. Section 1.468B-1, et seq., and to maintain that qualification.

The Settlement Fund shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg. Section 1.468B-1, et seq., and shall be administered by the Settlement Claims Administrator, subject to the ultimate authority of the Court. The Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment. The Parties agree to any relation-back election required to treat the Settlement Fund as a Qualified Settlement Fund from the earliest possible date.

The Parties recognize that the back pay awards to Qualified Claimants will be subject to applicable tax withholding and reporting, which will be handled as follows: the Settlement Claims Administrator shall serve as Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Fund, including the handling of tax-related issues and payments. Specifically, the Settlement Claims Administrator shall be responsible for withholding, remitting, and reporting the share of payroll taxes from the back wage/payment of each Qualified Claimant, and shall be responsible for billing Defendants for and paying the employer's share of payroll taxes or contributions (*i.e.* FICA, FUTA, SUTA, and Medicare). Subject to the Settlement Claims Administrator's obligation to comply with applicable laws, the Parties anticipate that any amounts designated as Incentive

Payments, non-wage compensation, or interest shall not be subject to withholding and shall be reported to the IRS on Form 1099.

The Settlement Claims Administrator shall satisfy all federal, state, local, and other reporting requirements (including any applicable reporting with respect to attorneys' fees and other costs subject to reporting), and any and all taxes, penalties and other obligations with respect to the payments or distributions from the Settlement Fund not otherwise addressed herein.

E. Allocation of the Gross Settlement Fund

The amounts approved by the Court for Incentive Payments and the amount approved by the Court for attorneys' fees, expenses, and costs shall be deducted from the Gross Settlement Amount to obtain a Revised Gross Settlement Amount.

The Revised Gross Settlement Fund shall be allocated to the Named Plaintiff and Opt-In Plaintiffs as set forth on Exhibit B and to Potential Opt-In Plaintiffs as set forth on Exhibit C in proportion to their share of the total amounts set forth on Exhibits B and C. The proportional share of the Revised Gross Settlement Fund of the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs shall be referred to as the Potential Gross Settlement Payment. The sum of the Potential Gross Settlement Payments for the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs shall equal the Revised Gross Settlement Amount.

The Potential Gross Settlement Payments attributed to the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs who timely file Claim Forms, and become

Qualified Claimants shall be allocated 50 percent to back wages and 50 percent to non-wage compensation.

The back wages shall be subject to all required employee-paid payroll taxes (federal income taxes, state income taxes, employee's share of FICA and FUTA taxes, and other state-specific statutory deductions) and other authorized or required deductions (garnishments, tax liens, child support, etc.). The non-wage compensation shall be treated as non-wage income to the Qualified Claimant. The Settlement Claims Administrator shall report the back wage payments to the Qualified Claimants on an IRS Form W-2, and shall report the non-wage compensation payments on an IRS Form 1099.

The back wage and non-wage compensation payments, along with any incentive payments approved by the Court, shall be paid in accordance with this Agreement to Qualified Claimants within thirty (30) calendar days of the Claim Bar Date.

Plaintiffs' Counsel shall make an application to the Court for an award of one third (1/3) of the Gross Settlement Amount (\$16,667) as payment of attorneys' fees, costs, and litigation expenses. Defendants will not oppose Plaintiffs' Counsel's attorneys' fees, costs, and litigation expenses for the representation of the Named Plaintiff, Opt-In Plaintiffs and Potential Opt-In Plaintiffs. This settlement does not cover attorneys' fees, costs and litigation expenses for individuals who are not eligible to become Qualified Claimants in this case. The settlement is not conditioned upon the Court's approval of Plaintiffs' Counsel's petition for fees, costs, and litigation expenses.

Payment of amounts approved by the Court for Plaintiffs' attorneys' fees, costs, and litigation expenses shall be paid from the Gross Settlement Fund within ten (10) calendar days of the date of the Court's order approving the Agreement and the amount of attorneys' fees, costs, and expenses becomes a final non-appealable order.

Payment of such attorneys' fees, expenses, and costs to Plaintiffs' Counsel shall constitute full satisfaction of any and all obligations by Defendants to pay any person, attorney or law firm for attorneys' fees, expenses or costs incurred on behalf of Qualified Claimants relating to the claims in this case. The Settlement Claims Administrator shall report the payment of these fees, expenses and costs to Plaintiffs' Counsel on an IRS Form 1099.

From the Gross Settlement Amount, Plaintiffs' Counsel shall seek an Incentive Payment of \$1,000 for the Named Plaintiff as payment for his significant involvement in commencing this litigation and his involvement in preparing for mediation for the benefit of the Potential Opt-In Plaintiffs, all as set forth in Exhibit A.

Qualified Claimants will have 120 calendar days after settlement checks are mailed out (the "Check Issuance Date") in which to negotiate the checks. If any Qualified Claimant does not negotiate his or her settlement check within 120 days after the Check Issuance Date, this check will be voided. Any funds remaining in the Settlement Fund after payment to: (1) all Qualified Claimants who timely cash their settlement checks (including any approved Incentive Payment to the Named Plaintiff; and (2) all attorneys' fees, costs, and litigation expenses approved by the Court, shall revert to Defendants.

IV. RELEASE BY QUALIFIED CLAIMANTS AND HARD ROCK CAFE

Conditioned upon the receipt of an order of final approval by the Court and in exchange for the monetary considerations recited in this Agreement, the Named Plaintiff and Opt-In Plaintiffs do hereby agree to dismiss the captioned case with prejudice and all Qualified Claimants do thereby and forever release, acquit, and discharge all claims relating to tip distribution practices and any and all other wage and hour claims at the Foxwoods Hard Rock Café, up to the date of the execution of this Agreement that were or could have been asserted in this matter against Defendants and their subsidiaries, affiliates, business units, members, shareholders, and their predecessors and successors, officers, directors, agents, employees and assigns, including without limitation, all state and federal claims for wages, penalties, interest, and non-wage compensation, common law claims, and all claims for attorneys' fees, costs, and expenses.

Also conditioned on the receipt of an order of final approval by the Court and in exchange for the release and dismissal of claims recited in this Agreement, Defendants and their subsidiaries, affiliates, business units, members, shareholders, and their predecessors and successors, officers, directors, agents, employees and assigns, do hereby and forever release, acquit, and discharge all claims against any of the Named Plaintiff, Opt-In Plaintiffs, and Potential Opt-In Plaintiffs from all claims arising out of this litigation.

V. PUBLICATION OF SETTLEMENT

This Agreement is not confidential; however, Counsel for the Named Plaintiff and the Named Plaintiff agree to make no statement to the media relative to this settlement and agree to make no press or media release.

VI. REPRESENTATION BY COUNSEL

All of the Settling Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement and that this Agreement has been executed with the consent and advice of counsel.

VII. NO ADMISSION OF LIABILITY

The Settling Parties acknowledge and agree that liability for the actions that are the subject matter of this Agreement is disputed by Defendants. This Agreement and the settlement are a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Settling Parties to this Agreement. The Settling Parties further acknowledge and agree that this Agreement and the settlement shall not be used to suggest an admission of liability in any dispute the Settling Parties may have now or in the future with respect to any person or entity. Neither this Agreement nor anything herein, nor any part of the negotiations had in connection herewith, shall constitute evidence with respect to any issue or dispute other than for purposes of enforcing this Agreement.

VIII. MODIFICATION OF AGREEMENT

This Agreement may not be modified or amended except in writing, signed by the respective counsel of record for the Settling Parties and as approved by the Court.

IX. CONSTRUCTION AND INTERPRETATION

This Agreement constitutes the entire agreement between the Settling Parties. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other oral or written representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Settling Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. This Agreement shall be subject to, governed by, construed, enforced and administered in accordance with the laws of the State of Florida, both in its procedural and substantive aspects, and without regard for the principle of conflict of laws, and shall be subject to the continuing jurisdiction of the United States District Court for the Middle District of Florida. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement and/or the written memorandum of understanding, or any specific term or condition thereof. The Named Plaintiff, Opt-In Plaintiffs and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither the Named Plaintiff, Opt-In Plaintiffs, nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

X. COUNTERPARTS

This Agreement, any amendments or modifications to it, and any other documents required or contemplated to be executed in order to consummate this

Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All counterparts of any such document together shall constitute one and the same instrument. A photocopy, facsimile, or digital image of an executed counterpart shall be enforceable and admissible as an original.

XI. BINDING EFFECT

This Agreement is binding upon and shall inure to the benefit of the Settling Parties to this Agreement, as well as their respective attorneys, and subsidiaries, affiliates, business units, members, shareholders, and their predecessors and successors, officers, directors, agents, employees and assigns. Without limiting the foregoing, this Agreement specifically shall be binding upon the spouses, children, heirs, assigns, successors and offspring of all Qualified Claimants.

XII. AUTHORITY OF COUNSEL

Counsel for the Named Plaintiff and Opt-In Plaintiffs, identified on Exhibit A, warrant and represent that they are expressly authorized by the Named Plaintiff and Opt-In Plaintiffs to take all appropriate action required or permitted to be taken pursuant to this Agreement in order to effectuate its terms. Counsel for Defendants warrant and represent that they are authorized to take all appropriate action required or permitted to be taken by Defendants pursuant to this Agreement in order to effectuate its terms.

XIII. CONTINUING JURISDICTION

The Parties hereto agree to move for the United States District Court for the Middle District of Florida to retain continuing jurisdiction to construe, interpret and enforce the provisions of this Agreement; to supervise the administration and

distribution of the resulting settlement funds; and to hear and adjudicate any dispute or litigation arising from or related to this Agreement.

XIV. EFFECT OF NON-APPROVAL

In the event that Agreement is not approved by the Court for any reason, this Agreement shall be terminated on the date the Court's order becomes final and non-appealable, and in addition: (1) the stipulation that the Opt-In Plaintiffs and Potential Opt-In Plaintiffs are similarly situated to the Named Plaintiff under 29 U.S.C. Section 216(b), and the releases contained herein shall be null and void; (2) within eleven (11) business days, any funds paid by Defendants into the Settlement Fund shall be returned to Defendants after the expenses of the Settlement Claims Administrator and the Settlement Fund have been paid; (3) nothing in this Agreement shall be used or construed by or against any party as a determination, admission, or concession of any issue of law or fact in the litigation; and (4) the Settling Parties do not waive, and instead expressly reserve, their respective rights with respect to the prosecution and defense of the litigation.

AGREED to this 30th day of June, 2011:

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Attorneys for Defendants

AGREED to this ____ day of September, 2011:

Hillary Schwab, Esq.
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**Attorneys for Named Plaintiff
and Opt-In Plaintiffs**

JASON HEATH

Dated: _____

TIM DILALLO

Dated: _____

STACY FERGUSON

Dated: _____

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Attorneys for Defendants

JENNIFER LUSSIER

Dated: _____

AMBER SAFARI

Dated: _____



JARRAID BELANGER

Dated: 9-15-11

AGREED to this 16 day of September, 2011:

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**Attorneys for Named Plaintiff
and Opt-In Plaintiffs**

Attorneys for Defendants

JASON HEATH

JENNIFER LUSSIER

Dated: _____

Dated: _____



TIM DILALLO

AMBER SAFARI

Dated: 9/16/2011

Dated: _____

STACY FERGUSON

JARRAID BELANGER

Dated: _____

Dated: _____

AGREED to this 21 day of September, 2011:

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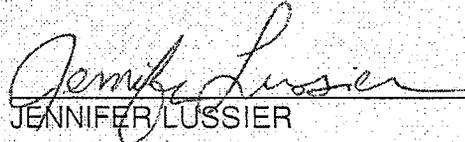
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**Attorneys for Named Plaintiff
and Opt-In Plaintiffs**

Attorneys for Defendants

JASON HEATH

Dated: _____



JENNIFER LUSSIER

Dated: 9/21/2011

TIM DILALLO

Dated: _____

AMBER SAFARI

Dated: _____

STACY FERGUSON

Dated: _____

JARRAID BELANGER

Dated: _____

AGREED to this 21st day of September, 2011:

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**Attorneys for Named Plaintiff
and Opt-In Plaintiffs**

Attorneys for Defendants

JASON HEATH

JENNIFER LUSSIER

Dated: _____

Dated: _____

TIM DILALLO

AMBER SAFARI

Dated: _____

Dated: _____



STACY FERGUSON

JARRAID BELANGER

Dated: 9/21/11

Dated: _____

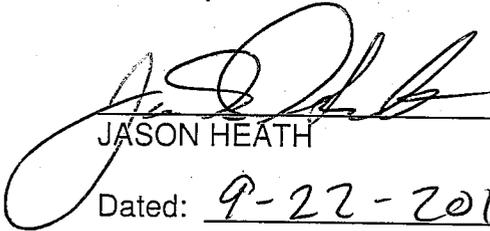
AGREED to this 22 day of September, 2011:

Hillary Schwab, Esq.
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**Attorneys for Named Plaintiff
and Opt-In Plaintiffs**

Attorneys for Defendants



JASON HEATH
Dated: 9-22-2011

JENNIFER LUSSIER
Dated: _____

TIM DILALLO
Dated: _____

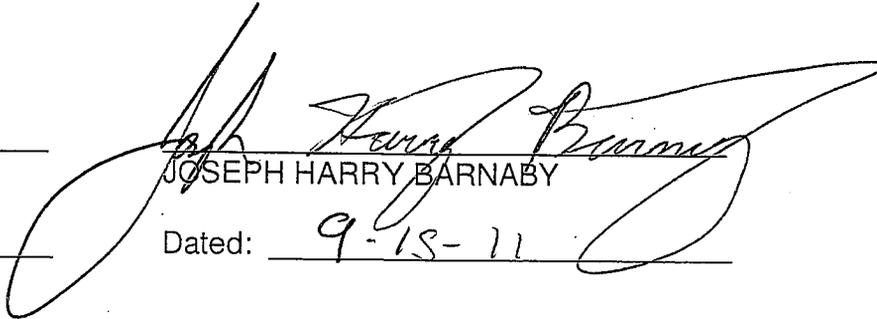
AMBER SAFARI
Dated: _____

STACY FERGUSON
Dated: _____

JARRAID BELANGER
Dated: _____

ELIZABETH PIGNATARA

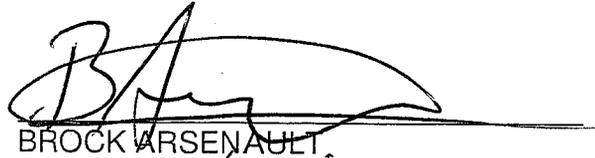
Dated: _____


JOSEPH HARRY BARNABY

Dated: 9-15-11

JENNIFER SELVIDO

Dated: _____


BROCK ARSENAULT

Dated: 9/15/11

PAUL NEVILLE

Dated: _____

SARAH JANE WALTMAN

Dated: _____

GORDON JOHNSON

Dated: _____

ALLISON TAPIA

Dated: _____

ELIZABETH PIGNATARA

Dated: _____

JOSEPH HARRY BARNABY

Dated: _____

Jennifer L. Selvido

JENNIFER SELVIDO

Dated: 9/13/11

BROCK ARSENAULT

Dated: _____

PAUL NEVILLE

Dated: _____

SARAH JANE WALTMAN

Dated: _____

GORDON JOHNSON

Dated: _____

ALLISON TAPIA

Dated: _____

ELIZABETH PIGNATARA

Dated: _____

JOSEPH HARRY BARNABY

Dated: _____

JENNIFER SELVIDO

Dated: _____

BROCK ARSENAULT

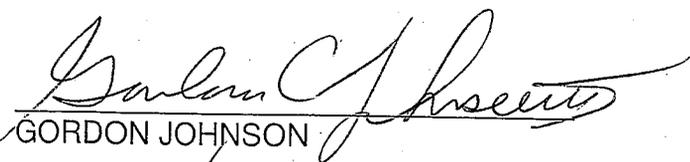
Dated: _____

PAUL NEVILLE

Dated: _____

SARAH JANE WALTMAN

Dated: _____


GORDON JOHNSON

Dated: 9/16/2011

ALLISON TAPIA

Dated: _____

ELIZABETH PIGNATARA

Dated: _____

JOSEPH HARRY BARNABY

Dated: _____

JENNIFER SELVIDO

Dated: _____

BROCK ARSENAULT

Dated: _____

Paul R. Neville

PAUL NEVILLE

Dated: 9-16-11

SARAH JANE WALTMAN

Dated: _____

GORDON JOHNSON

Dated: _____

ALLISON TAPIA

Dated: _____

Elizabeth Pignataro - Rekowski
ELIZABETH PIGNATARA

Dated: 9-17-11

JOSEPH HARRY BARNABY

Dated: _____

JENNIFER SELVIDO

Dated: _____

BROCK ARSENAULT

Dated: _____

PAUL NEVILLE

Dated: _____

SARAH JANE WALTMAN

Dated: _____

GORDON JOHNSON

Dated: _____

ALLISON TAPIA

Dated: _____

ELIZABETH PIGNATARA

JOSEPH HARRY BARNABY

Dated: _____

Dated: _____

JENNIFER SELVIDO

BROCK ARSENAULT

Dated: _____

Dated: _____

PAUL NEVILLE

SARAH JANE WALTMAN

Dated: _____

Dated: _____

GORDON JOHNSON

Dated: _____


ALLISON TAPIA

Dated: 9/20/11

3. In my opinion, the \$1,000 incentive payment for named plaintiff Jason Heath is fair, reasonable, and appropriate. Mr. Heath was one of the first individuals to contact me with respect to his potential claims against the defendants in this case, and assisted me in drafting the complaint in this matter. He actively participated in every stage of the litigation, including responding to 38 document production requests and 15 written interrogatories. He submitted a sworn affidavit in support of Plaintiffs' motion for conditional certification. He helped me prepare for the mediation in this case, including participating in several telephone interviews. He also acted a primary and most reliable contact person between Plaintiffs' Counsel and the opt-in plaintiffs and potential opt-in plaintiffs.

4. Plaintiffs' counsel's lodestar significantly exceeds the amount agreed to (\$16,667). As set forth in the attached spreadsheet, Plaintiffs' counsel have expended 102.3 hours on the following: interviews with named plaintiff, opt-in plaintiffs and potential opt-in plaintiffs, and drafting affidavits; drafting complaint and amendments to complaint; drafting initial disclosures, discovery requests and responses to Defendants' discovery requests; legal research and briefing on Plaintiffs' motion to transfer claims of Connecticut plaintiffs; mediation and preparation for mediation. All of these hours were spent work performed for the plaintiffs whose claims are to be resolved under this proposed settlement.

I declare under penalty of perjury under the laws of the State of Florida and of the United States that the foregoing is true and correct.

Executed this 30th day of September 2011, at Boston, Massachusetts.

/s/ Hillary Schwab
Hillary Schwab, Esq.

Heath, et al. v. Hard Rock Cafe International (STP), Inc., et al.
M.D. Fla. Civil Action No. 6:10-cv-344-Orl-JA-KRS

Attorney Time Records

Date	TimeKeeper	Hours	Description
02/17/2010	Schwab	0.2	Interview with potential Connecticut lead plaintiff
02/24/2010	Schwab	2	Work on drafting complaint
02/25/2010	Schwab	0.5	Call with CT lead plaintiff (Heath); research for complaint
02/25/2010	Schwab	1.3	Work on finalizing complaint; following up with potential plaintiffs
02/26/2010	Schwab	0.4	Research for complaint
02/26/2010	Schwab	4	Contact with potential plaintiffs; research claims
03/01/2010	Schwab	2.2	Work on getting complaint finalized
03/16/2010	Schwab	0.5	Work on related case and interested person filings
03/17/2010	Schwab	0.3	Finalize interested persons certificate
04/12/2010	Schwab	1.9	Follow-up with potential opt-in plaintiffs and witnesses
04/15/2010	Schwab	1.9	Draft and serve amended complaint; call with potential plaintiff
04/20/2010	Schwab	0.4	Work on affidavits from opt-in plaintiffs
04/22/2010	Schwab	0.3	Work on affidavits from opt-in plaintiffs
04/23/2010	Schwab	1	Work on finalizing complaint and filing opt-ins; follow-up with class members and lead plaintiff
04/28/2010	Schwab	0.3	Filing amended complaint, etc.
04/30/2010	Schwab	5.8	Interviews with potential opt-ins and witnesses
05/07/2010	Schwab	0.6	Work on affidavits re expo tip-out; call with witnesses
05/10/2010	Schwab	0.6	Respond to questions from opt-ins
05/13/2010	Schwab	0.4	Follow up with opt-in plaintiffs
05/14/2010	Schwab	0.5	Meet with staff re opt-ins; follow-up with opt-ins
05/14/2010	Schwab	0.6	Prepare notice of filing opt-ins and follow-up re briefing schedule
06/04/2010	Schwab	0.7	Follow-up with potential opt-in plaintiffs
06/07/2010	Schwab	0.4	Follow-up with potential opt-in plaintiffs
06/10/2010	Schwab	0.3	Contact with potential opt-in plaintiffs
09/08/2010	Schwab	0.2	Work on extending deadlines for initial disclosures and complaint amendments
09/08/2010	Schwab	0.3	Follow-up with potential opt-in plaintiffs
09/10/2010	Schwab	0.4	Prepare for and have telephone call with defense counsel re deadlines/scheduling
09/15/2010	Schwab	1.7	Review and finalize discovery requests and depo notices
09/15/2010	Schwab	0.8	Work on amending complaint
09/17/2010	Schwab	0.3	Finalize initial disclosures
09/20/2010	Schwab	1.6	Work on amending complaint
09/24/2010	Schwab	0.2	Work on amending complaint
10/01/2010	Schwab	2.8	Work on discovery responses
10/08/2010	Schwab	2.8	Revise, finalize and prepare discovery responses
10/08/2010	Schwab	0.6	Follow-up re opt-ins
10/15/2010	Schwab	0.8	Work on motion to amend complaint
01/11/2011	Schwab	3.6	Research and strategy re CT case and motion to transfer; call with CT class member; draft motion to transfer
01/12/2011	Schwab	1.5	Work on motion to transfer CT claims and dismiss other claims

Heath, et al. v. Hard Rock Cafe International (STP), Inc., et al.
M.D. Fla. Civil Action No. 6:10-cv-344-Orl-JA-KRS

Attorney Time Records

01/13/2011	Schwab	1.5	Work on finalizing motion to transfer Connecticut claims
01/20/2011	Schwab	2.2	Research on Connecticut wage laws
01/21/2011	Schwab	0.9	Work on preparing for mediation, call with co-counsel and defense counsel, damages calculations
01/24/2011	Schwab	0.3	Call with lead plaintiff re CT case
01/24/2011	Schwab	1.5	Follow-up with CT opt-ins
01/24/2011	Schwab	0.9	Conversation with defense counsel re tolling, settlement discussions, etc. and follow-up
01/26/2011	Schwab	2.1	Work on motion to transfer CT claims and dismiss
01/26/2011	Schwab	0.7	Work on motion to transfer CT claims and dismiss
01/27/2011	Schwab	0.8	Work on motion to transfer CT claims and dismiss and interviews with Connecticut potential plaintiffs
01/28/2011	Schwab	0.1	Work on CT case; calls with CT opt-ins
02/03/2011	Schwab	0.8	Conference call re mediation
02/04/2011	Schwab	0.7	Review draft of tolling and stand-down agreement; calls with plaintiffs and potential plaintiffs
02/07/2011	Schwab	1.6	Contacts with potential plaintiffs
02/09/2011	Schwab	0.2	Contact with potential CT plaintiffs
02/11/2011	Schwab	1.3	Strategy and research re motion to transfer and dismiss
02/14/2011	Schwab	0.5	Review def opposition to motion to dismiss and transfer and research
02/16/2011	Schwab	1.1	Review and revise tolling agreement; strategy re: moving forward
02/17/2011	Schwab	0.6	Finalize amended notice of mediation; review stipulation on tolling, etc.
02/28/2011	Schwab	0.3	Work on finalizing stipulation for mediation
03/08/2011	Schwab	0.7	Review magistrate R&R on motion to transfer and follow-up/strategy
03/10/2011	Schwab	0.5	Call with CT lead plaintiff and follow-up
03/18/2011	Schwab	1.2	Review data for mediation
03/21/2011	Schwab	0.7	Damages calculations and mediation prep
03/23/2011	Schwab	0.4	Review def's objections to R&R on motion to transfer and figure out response deadline
03/24/2011	Schwab	0.6	Work on damages calculations for mediation
03/25/2011	Schwab	0.9	Work on mediation damages calculations and class member/lead plaintiff follow-up
03/30/2011	Schwab	0.9	Work on damages calculations for mediation and pre-mediation statement
03/31/2011	Schwab	2.6	Work on mediation statement
03/31/2011	Schwab	2.2	Work on opposition to objections to R&R
04/01/2011	Schwab	3.7	Work on mediation statement
04/01/2011	Schwab	0.5	Work on opposition to objections to R&R
04/04/2011	Schwab	0.3	Work on opposition to objections to R&R
04/05/2011	Schwab	2.4	Work on pre-mediation statement and damages calculations; call with defense counsel re data
04/05/2011	Schwab	0.3	Work on and finalize opposition to objections to R&R
04/06/2011	Schwab	4	Work on pre-mediation statement

Heath, et al. v. Hard Rock Cafe International (STP), Inc., et al.
M.D. Fla. Civil Action No. 6:10-cv-344-Orl-JA-KRS

Attorney Time Records

04/07/2011	Schwab	2	Work on damages calculations for mediation; legal research to prep for mediation
04/08/2011	Schwab	2.8	Work on mediation statement and affidavits
04/11/2011	Schwab	2.8	Prep for mediation: damages calculations, read cases, etc.
4/13/2011	Schwab	10	Prep for and attend mediation
	TOTAL	102.3	

NOTICE OF SETTLEMENT AND OPPORTUNITY TO FILE A CLAIM
JASON HEATH ET AL. V. HARD ROCK CAFÉ INTERNATIONAL (STP), INC. ET AL.
M.D. Fla. Civil Action No. 6:10-cv-344-JA-KRS

To: All persons who worked as servers and/or bartenders for the Hard Rock Café at Foxwoods Casino in Connecticut from May 1, 2008, to June 21, 2009.

Re: Fair Labor Standards Act (“FLSA”) Settlement relating to tip distribution practices at the Foxwoods Hard Rock Café

**PLEASE READ THIS NOTICE CAREFULLY
IT MAY AFFECT YOUR LEGAL RIGHTS**

**TO PARTICIPATE IN THE SETTLEMENT OF THIS CASE YOU MUST
RETURN THE ENCLOSED CLAIM FORM SO THAT IT IS
RECEIVED BY THE CLAIMS ADMINISTRATOR ON OR BEFORE _____**

I. INTRODUCTION

In this case, the plaintiffs have alleged that Defendants violated the Fair Labor Standards Act at the Foxwoods Hard Rock Café in Connecticut through the practice of servers and bartenders sharing a portion of their tips with employees called “expeditors” or “expos.” Plaintiffs allege that this practice was in effect at the Foxwoods Hard Rock Café until June 21, 2009. Hard Rock Café denies the plaintiffs’ allegations. Nevertheless, the parties have reached an agreement to settle these claims on a collective basis for all individuals who worked at the Foxwoods Hard Rock Café from May 1, 2008, to June 21, 2009. You have received this notice because Hard Rock Café’s records indicate that you were employed as a server and/or a bartender at the Foxwoods Hard Rock Café during that time period. If this information is correct and you timely file a Claim Form (also called a “Consent to Join” form), you will be entitled to monetary compensation under the settlement.

On _____, the Court approved the Settlement Agreement and Notice as being a fair and reasonable settlement of the FLSA claims raised in this case. The Plaintiffs’ attorneys believe that the settlement is fair, reasonable and in the best interests of the named plaintiff and all potential opt-in plaintiffs.

II. TERMS OF THE SETTLEMENT AGREEMENT

Hard Rock Café has agreed to pay a total of \$50,000 to resolve the claims of individuals who worked at the Foxwoods Hard Rock Café who have already filed this case as well as the claims of individuals who submit Claim Forms and worked as a server and/or a bartender at the Foxwoods Hard Rock Café from May 1, 2008, to June 21, 2009. This amount will also pay Plaintiffs’ attorneys fees, costs, and expenses in this action. From this amount, \$4,800.08 will be distributed to the thirteen individuals

who filed opt-in consent forms in this case as their share of the settlement, and an additional, one-time incentive payment of \$1,000 will be made to Jason Heath, the named plaintiff who initiated this lawsuit and assisted counsel in its prosecution. Hard Rock Café has agreed to pay separately the employer's share of all relevant withholding and payroll taxes and administrative costs associated with the settlement.

The parties have agreed that each eligible individual who timely files a Claim Form will receive a payment based on the hours that he or she worked during the time period of May 1, 2008 to June 21, 2009 and his or her hourly rate. The parties have also agreed that the named plaintiff will receive an additional amount for his time and effort expended in litigating this action.

III. OPPORTUNITY TO FILE A CLAIM FORM

If you wish to participate in the settlement of this case, you must mail the enclosed Claim Form so that it is received by the Claims Administrator on or before _____. Please use the pre-addressed envelope to return your Claim Form to the following address:

Simpluris, Inc., Claims Administrator for Foxwoods Hard Rock Café Settlement
3176 Pullman Street
Suite 123
Costa Mesa, CA 92626

Additionally, it is your responsibility to keep the Claims Administrator apprised of your correct address; please contact the Claims Administrator with any change of address. Payments will be mailed to eligible claimants in approximately _____.

No late Claim Forms will be considered. If you do not wish to participate in this settlement, you do not need to do anything and you will automatically be excluded from the settlement. If you choose not to file a Claim Form, you will not be affected by the settlement of this lawsuit and you will not receive a monetary settlement. Any such relief would be obtainable by you only if you file your own lawsuit within the time provided by law and then you prevail on your claims in that lawsuit.

If you would like more information about the settlement, you should contact the claims administrator toll-free at (800) 779-2104. If you have further questions that cannot be answered by the claims administrator, you may contact counsel for Plaintiffs. Their contact information is:

Hillary Schwab, Esq.
Lichten & Liss-Riordan, P.C.
100 Cambridge Street, 20th Floor
Boston, MA 02114
Tel: (617) 994-5800

Fax: (617) 994-5801
Email: hschwab@llrlaw.com
Legal assistant: Alisha Ripley
Email: aripley@llrlaw.com

PLEASE DO NOT CALL OR CONTACT THE COURT.

IV. BINDING EFFECT AND RELEASE OF CLAIMS

If you mail your Claim Form so that it is received by the Claims Administrator on or before _____, you will be bound by the terms of the Settlement Agreement, you will release Defendants for all claims you may have relating to tip distribution practices at the Foxwoods Hard Rock Café and all other wage and hour claims relating to your employment at the Foxwoods Hard Rock Café from May 1, 2008 up to the date of the execution of the parties' Settlement Agreement (including claims under federal and state wage laws and the common law). You will be barred from bringing such a claim in the future, and you will receive a monetary award based on the formula described in Section II above.

After all timely submitted Claim Forms are received, the Claims Administrator will mail a settlement check to each qualified claimant who worked during the relevant time period and who timely filed a Claim Form. The settlement checks will be in full settlement of any and all claims, known or unknown, for **alleged FLSA violations and any and all other wage and hour claims (including claims under federal and state wage laws and the common law) relating to your employment at the Foxwoods Hard Rock Café from May 1, 2008 up to the date of the execution of the parties' Settlement Agreement.** State and federal income, Social Security, and Medicare taxes will be withheld from the settlement check, and an itemized listing of any deductions will be provided. Hard Rock Café or the Claims Administrator will provide a W-2 form setting forth the taxes withheld from the settlement payment. If you timely file a Claim Form, the settlement will be binding on you whether or not you cash the settlement checks. If you do not cash the settlement checks within 120 days following the issuance of the checks, your checks will be void and the amount of your settlement will revert to Defendants.

V. NO RETALIATION OR DISCRIMINATION

Hard Rock Cafe has voluntarily agreed to the terms of this settlement. Hard Rock Café will not retaliate or take any adverse action against you for participating in this settlement. Federal law prohibits any such retaliation.

CLAIM FORM AND CONSENT TO JOIN LAWSUIT

Heath, et al. v. Hard Rock Café International (STP), Inc.
U.S. Dist. Ct., Middle Dist. of Florida, Civil Action No. 6:10-cv-00344-JA-KRS

CONSENT TO JOIN COLLECTIVE ACTION
Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b)

1. I hereby consent and agree and “opt in” to become a plaintiff in a lawsuit brought under the Fair Labor Standards Act relating to tip distribution practices at the Hard Rock Café at Foxwoods Casino in Connecticut.

2. I hereby agree to be bound by the collective action settlement approved by Plaintiffs’ attorneys and Defendants’ attorneys and approved by this Court as fair, adequate, and reasonable.

3. I have read the Release of Claims contained in the Notice of Settlement and in consideration for receiving a monetary payment in this case agree to be bound by the terms of that Release of Claims and release any claims that I have or may have had under the FLSA, and any and all other wage and hour claims (including claims under federal and state wage laws and the common law), relating to my employment at the Hard Rock Café at the Foxwoods Casino in Connecticut for the time period of May 1, 2008, through the date of the execution of the parties’ Settlement Agreement.

4. I hereby designate Hillary Schwab, Esq. of Lichten & Liss-Riordan, P.C., 100 Cambridge Street, 20th Floor, Boston, MA 02114, and their local counsel in Florida Mary Jill Hanson, Esq., to represent me for all purposes in this action.

Signature: _____ Date: _____

Social Security Number: _____

Name: _____

Address: _____

City _____ State _____ Zip _____

Telephone: _____ (home) _____ (cell)

E-Mail: _____

ORDERED that _____ is appointed to serve as Claims Administrator in this case and is authorized to perform the duties set forth in the Settlement Agreement, and it is further

ORDERED that, within the time frame and in the manner provided in the Settlement Agreement, the parties will cause the Claims Administrator to mail or cause to be mailed to all Potential Opt-In Plaintiffs as defined therein a Notice Of Settlement And Opportunity To File Claim Form, substantially in the form of the Notice attached as Exhibit C to Plaintiffs' Renewed Motion; and it is further

ORDERED that Potential Opt-In Plaintiffs will have an opportunity to file a Claim Form with the Claims Administrator within the time frame and in the manner provided in the Settlement Agreement; and it is further

ORDERED that, as soon as reasonably practicable after all settlement payments are made pursuant to the Settlement Agreement, Plaintiffs' counsel will file a declaration from the Claims Administrator identifying all Potential Opt-In Plaintiffs who timely filed Claim Forms. The Claims Administrator shall certify that all amounts under the settlement, less any amounts withheld or required to be deducted by law, have been paid to the Named Plaintiff, Opt-In Plaintiffs, and Plaintiffs' counsel. To protect the privacy of the Opt-In Plaintiffs, the Claims Administrator's declaration shall not specify the amounts paid to each individual. The Parties thereafter jointly will move the Court for entry of a stipulated judgment and an order dismissing the Action in its entirety with prejudice, and it is further

ORDERED that the Court shall retain jurisdiction to enforce the terms of the Settlement Agreement until the Parties have jointly moved to dismiss this Action in its entirety with prejudice.

It is so ordered this _____ date of _____, 2011, by:

The Honorable Karla Spaulding
United States Magistrate Judge