

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

MELVIN CIFUENTES LEMUS and CARLOS ENRIQUE CHACON,
individually and on behalf of those similarly situated,

Plaintiffs,

- against -

S&S SPORTS INC., SIDANA'S INC., AMARDEEP SINGH,
BOBBY SINGH and GAGNEET SINGH and any other entities
affiliated with or controlled by S&S SPORTS INC., SIDANA'S INC.,
and/or AMARDEEP SINGH,

Defendants.

Index No.: 606423/2014

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and between, on the one hand, Plaintiffs Melvin Cifuentes Lemus and Carlos Enrique Chacon (collectively, "Named Plaintiffs") on behalf of themselves and the members of a class they seek to represent ("Class") (collectively, "Plaintiffs") and, on the other, Defendants S&S Sports Inc., Sidana's Inc., Amardeep Singh, and Gagneet Kaur (collectively, "Defendants," and together with Named Plaintiffs, the "Parties").

RECITALS AND BACKGROUND

A. Named Plaintiffs filed a Class Action Complaint on December 3, 2014, which is now pending in the Supreme Court of the State of New York, Nassau County (the "Court"), designated as Index No. 606423/2014 (the "Action").

B. Defendants have defended and intend to vigorously contest each and every claim in the Action, deny all material allegations of the Action, as to which Defendants allege numerous meritorious defenses. Defendants, without admitting 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. Defendants further agree, for settlement purposes only, to class certification under Sections 901 and 902 of the New York Civil Practice Law and Rules ("CPLR").

C. Plaintiffs' Counsel analyzed and evaluated the merits of the claims made against Defendants and the impact of this Agreement on Named Plaintiffs 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 Named Plaintiffs and the Class.

D. Named Plaintiffs and Defendants, by and through their respective counsel, have engaged in extensive settlement discussions. Named Plaintiffs, 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.

E. The Parties agree that if this Agreement is terminated pursuant to Section 4, the Action will proceed as if this Agreement had not been executed.

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 Approval Order. “Approval Order” means the Order entered by the Court: (i) certifying the Class; (ii) approving the terms and conditions of this Agreement, including approving costs and fees; (iii) directing the manner and timing of providing Notice to the Class Members; and (iv) setting the dates and deadlines for effectuating settlement, including the Bar Date and the date of the mailing of Notice and settlement checks.

1.3 Authorized Claimant. “Authorized Claimant” means Named Plaintiffs, a Class Member or the authorized legal representative of such member, who timely files a Claim Form in accordance with the terms of this Agreement, and who is therefore entitled to receive a Settlement Check. Named Plaintiffs are deemed Authorized Claimants upon execution of this Agreement and need not return a Claim Form.

1.4 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 2.5(D), the Bar Date shall be (1) no later than ninety (90) 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 ninety (90) days due to change of address, military service, hospitalization or other extraordinary circumstances, an additional thirty (30) days will be given to such Class Members to file a Claim Form.

- 1.5 Claim Form and Release.** “Claim Form” or “Claim Form and Release” means the form, a copy of which is attached to the Notice of Proposed Settlement, which putative Class Members must sign and return postmarked by the Bar Date.
- 1.6 Class Counsel.** “Class Counsel” or “Plaintiffs’ Counsel” means Leeds Brown Law, P.C., One Old Country Road, Suite 347, Carle Place, New York 11514.
- 1.7 Class List.** “Class List” means a list in electronic format, preferably in .xls or .xlsx (Excel) format that includes the names, last known addresses, social security numbers, telephone numbers, W-2 information, and dates of employment for each respective Class Member.
- 1.8 Class Members.** “Class Members” means Named Plaintiffs and current and former non-exempt employees of Defendants who performed work during the period December 3, 2008 through January 1, 2016. Collectively, all Class Members are referred to as the “Class” or “Settlement Class.”
- 1.9 Costs and Fees.** “Costs and Fees” means Plaintiffs’ Counsel’s attorneys’ fees, costs, and expenses; accountant fees and costs; Settlement Claims Administrator’s fees and costs; Employer Payroll Taxes; the Reserve Fund; and Service Awards.
- 1.10 Court.** “Court” means the Supreme Court of the State of New York, County of Nassau.
- 1.11 Days.** “Days” means business days if the specified number is less than ten (10), and calendar days if the specified number is ten (10) or greater.
- 1.12 Defendants.** “Defendants” means S&S Sports Inc., Sidana’s Inc., Amardeep Singh, and Gagneet Kaur.
- 1.13 Defendants’ Counsel.** “Defendants’ Counsel” means Gary Schoer, Esq., 6800 Jericho Turnpike, Suite 108W, Syosset, New York 11791.
- 1.14 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.
- 1.15 Final Effective Date.** Provided no appeal is timely filed, the “Final Effective Date” means thirty (30) days after the Court has entered the Final Stipulation. If such an appeal is timely filed, the latest of the following, if applicable, becomes the Final Effective Date: (1) any appeal from the Final Stipulation has been finally dismissed; (2) the Final Stipulation has been affirmed on appeal in a form substantially identical to the form of the Final Stipulation entered by the Court; (3) the time to petition for review with respect to any appellate decision affirming the Final Stipulation has expired; and (4) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Stipulation in a form entered by the Court.

- 1.16 Final Stipulation.** “Final Stipulation” means the proposed so-ordered stipulation entered into by the Parties to be so-ordered by the Court authorizing the dismissal of the Action with prejudice.
- 1.17 Final Settlement Amount.** “Final Settlement Amount” means the sum of the Net Settlement Fund plus all Court-approved Costs and Fees.
- 1.18 Gross Settlement Fund.** “Gross Settlement Fund” means Eight Hundred Thousand Dollars (\$800,000.00), the amount that Defendants agree to pay and that is utilized for calculation and distribution purposes for complete and final resolution of the Action.
- 1.19 Individual Gross Amount.** “Individual Gross Amount” means the amount allocated to each individual Authorized Claimant pursuant to Section 6.7.
- 1.20 Individual Net Amount.** “Individual Net Amount” means the amount paid to the individual Authorized Claimants after proper taxes are withheld and paid pursuant to Section 6.7.
- 1.21 Named Plaintiffs.** “Named Plaintiffs” means Melvin Cifuentes Lemus and Carlos Enrique Chacon.
- 1.22 Net Settlement Fund.** “Net Settlement Fund” means the aggregate balance to be distributed to all Authorized Claimants after the deduction of Costs and Fees.
- 1.23 Notice(s).** “Notice” or “Notices” means the Court-approved Notice of Settlement of Class Action Lawsuit as authorized in the Approval Order.
- 1.24 Objector.** “Objector” means an individual Authorized Claimant who properly files an objection to this Agreement.
- 1.25 Opt-out Statement.** “Opt-out Statement” means a written, signed statement that an individual Class Member has elected to exclude himself or herself (“opt out”) from the settlement.
- 1.26 Qualified Settlement Fund.** “Qualified Settlement Fund” or “QSF” means the account established and controlled by the Settlement Claims Administrator for the purposes of retaining and distributing the Final Settlement Amount in accordance with this Agreement. The QSF will be controlled by the Settlement Claims Administrator subject to the terms of this Agreement, the Preliminary Approval Order and the Final Order. Interest, if any, earned in the QSF will become part of the Net Settlement Fund to be distributed to the Authorized Claimants.
- 1.27 Released Class Claims.** “Released Class Claims” means any and all wage and hour claims based on or under New York State law, arising during the Settlement Period that were asserted in Plaintiffs’ Complaint. The Released Class Claims include, but are not limited to, statutory, constitutional, contractual, or common law claims for minimum wage, overtime compensation, or any related wage and hour claims, interest on such claims,

penalties, damages, liquidated damages, attorneys' fees, expenses, disbursements, litigation costs and fees, restitution, or equitable relief.

- 1.28 Released Defendants.** "Released Defendants" means Defendants S&S Sports Inc., Sidana's Inc., Amardeep Singh, and Gagneet Kaur.
- 1.29 Represented Workweeks.** "Represented Workweeks" means the aggregate total amount of weeks worked by Class Members during the Relevant Period. The accuracy of the Represented Workweeks is subject to verification pursuant to Section 5.
- 1.30 Reserve Fund.** "Reserve Fund" is an amount set aside in the QSF in case of error, late claim, or omission to be paid and corrected via the mechanisms outlined in Section 6.3.
- 1.31 Service Award.** "Service Award" means that portion of the Final Settlement Amount, if any, requested by Named Plaintiffs and approved by the Court as a reasonable incentive award to Named Plaintiffs for representing the interests of the Class Members, for engaging in discovery, for communicating with Class Counsel, and otherwise representing the interests of other Class Members during the course of this litigation.
- 1.32 Settlement Claims Administrator.** "Settlement Claims Administrator" means the qualified administrator selected pursuant to Section 2.4.
- 1.33 Settlement Checks.** "Settlement Checks" means checks issued to Authorized Claimants for their Individual Net Amount.
- 1.34 Settlement Period.** "Settlement Period" means December 3, 2008 through January 1, 2016.

2. APPROVAL AND PROCEDURE

- 2.1 Settlement Class.** For purposes of settlement only, the Parties agree to class certification pursuant to CPLR §§ 901 and 902 to include all Class Members.
- 2.2 Approval Motion.**
- A. Within fifteen (15) days of complete execution of this Agreement, Class Counsel shall file a Motion for Settlement Approval ("Approval Motion"). In connection with the Approval Motion, Class Counsel will submit to the Court: (1) the proposed Notice, (2) the proposed Claim Form, (3) the proposed Approval Order, and (4) an executed version of this Agreement.
 - B. Plaintiffs will file the Approval Motion as "unopposed." Defendants may not oppose such application so long as it is consistent with the terms and conditions of this Agreement.

2.3 Final Stipulation. Within five (5) days after entry of the Approval Order, Defendants shall sign the Final Stipulation, and return promptly to Class Counsel. Plaintiffs shall not be required to execute the Final Stipulation until the provisions of Section 7.1 apply.

2.4 Settlement Claims Administrator.

A. **Retention.** No later than five (5) days after the entry of the Approval Order, Class Counsel shall engage a Settlement Claims Administrator.

B. **Funding Settlement Claims Administrator.** The costs and expenses incurred by the Settlement Claims Administrator shall be paid from the Final Settlement Amount 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 two (2) 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 answerers 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) distributing the Settlement Checks to Authorized Claimants and/or Court-approved Costs and Fees, as necessary; (ix) preparing, sending and/or wire-transferring Class Counsel's attorneys' fees, expenses, and costs; (x) mailing Service Awards and Settlement Checks in accordance with this Agreement and the Final Order; (xi) paying all of Defendants' obligations for Employer Payroll Taxes, including issuing the W-2 Forms for all amounts paid from the Final Settlement Amount; (xii) responding to inquiries of Class Members regarding procedures for filing objections, Opt-out Statements, and Claim Forms; (xiii) referring to Class Counsel all inquiries by Class Members or Authorized Claimants regarding matters not within the Settlement Claim Administrator's duties specified herein; (xiv) responding to inquiries of counsel for the Parties relating to the Settlement Claims Administrator's duties specified herein; (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 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; (xvii) confirming in writing to counsel for the Parties and the Court its completion of the administration of the settlement; (xviii) timely responding to communications from the Parties and their counsel; (xix) providing

all information, documents and calculations necessary to confirm the Final Settlement Amount; and (xx) such other tasks as the Parties mutually agree.

- 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.

2.5 Notice and Claim Forms to Class Members.

- A. **Class List to Class Counsel and Settlement Claims Administrator.** Within ten (10) days after this Agreement is signed by the Parties, Defendants' Counsel shall provide Class Counsel with the Class List, along with all W-2s and payroll records. Within (5) days after the issuance of the Approval Order, Class Counsel shall provide these same documents to the Settlement Claims Administrator.
- B. **Notice.** The Notice will inform Class Members about this settlement as well as their waiver of any interest and liquidated damages, and will also advise them of the opportunity to object to, opt-out of, or participate in the settlement. Within twenty (20) days of the entry of the 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 and Claim Forms.
- 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 a Notice and Claim Form to any Class Member who requests them after the initial mailing of Notice and before the Bar Date. The Settlement Claims Administrator will notify Class Counsel and Defendants' Counsel of any Notices and Claim Forms returned as undeliverable after the first mailing, including those returned as undeliverable after any subsequent mailing. All costs of locating Class Members will be paid from the QSF.
- D. **Bar Date.** To be deemed an Authorized Claimant, Class Members must postmark, email, or fax a signed Claim Form to the Settlement Claims Administrator by the Bar Date. The Bar Date shall be (i) ninety (90) 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 did not receive the Notice, or were unable to file a timely Claim Form due to factors such as change of address, military service, hospitalization, or other extraordinary circumstances. If an envelope does not contain a postmark, it shall be deemed received on the date that the Settlement Class Administrator stamps the envelope or Claim Form as "received."
- E. **Publication.** Plaintiffs may publish notice via website on leedsbrownlaw.com consisting only of the Notice and Claim Form, such that individual Class Members

may obtain the information regarding participation online. Plaintiffs may also (1) circulate publication in a magazine or newspaper of general circulation in an appropriate geographic region, reasonable in light of the demographics of the Class Members, and/or (2) provide publication on social media sites appropriate in light of the demographics of the Class Members.

- F. **Additional Notice.** If Authorized Claimants comprise less than ten percent (10%) of Class Members, the Parties shall discuss additional methods for providing the Notice and Claim Form to Class Members, such as contacting Class Members by telephone and/or text message. Defendants shall not oppose any reasonable proposals

2.6 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 a statement indicating his or her intention to opt-out, such as: “I opt out of the S&S 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 end of the time period 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 Defendants’ Counsel not later than seven (7) days after receipt.

2.7 Objectors.

- A. Class Members who do not submit an Opt-out Statement, and who wish to object to the settlement as set forth in this Agreement, must fax or postmark a written statement to the Settlement Claims Administrator within thirty (30) days from the mainlining of the Notice. The written objection must: (1) clearly identify the written statement as an objection, such as “I object to the settlement in the S&S case”; (2) contain all reasons for the objection; (3) contain the Objector’s name, address, telephone number, dates and categories of employment; and (4) be signed by the Objector.
- B. 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.

- C. Class Counsel shall promptly file the date-stamped originals of any and all Objections with the Court.
- D. The Parties may file with the Court written responses to any filed objections with the Final Stipulation.
- E. Should the Court request a hearing, those Class Members who timely submit an Opt-out Statement will be contacted by mail as to the date and time of the hearing.
- F. An Objector may withdraw his or her objection at any time.

3. FINAL CALCULATIONS

3.1 No later than twenty-one (21) days after the Bar Date, the Settlement Claims Administrator shall provide to Class Counsel and Defendants' Counsel: (a) a list of all Authorized Claimants; (b) a list of all Objectors; (c) a list of all Class Members who timely submitted an Opt-out Statement; and (d) the final calculations for all Authorized Claimants' Settlement Checks, taxes (employer and employee side), and Court-approved Costs and Fees ("Final Calculations").

3.2 Threshold Amount. If the Final Settlement (calculation of authorized claims plus costs, fees, and expenses, claims administration costs, Service Awards, and Reserve Fund) is calculated at less than Three Hundred Thousand Dollars (\$300,000.00), then the difference between \$300,000.00 and Net Settlement Amount shall be maintained in the Reserve Fund. Under no circumstances will Defendants' total payout equal less than \$300,000.00.

4. TERMINATION AND ITS EFFECTS

4.1 Defendants' Right to Terminate. If the Final Settlement Amount exceeds Three Hundred Thousand Dollars (\$300,000.00), then the Parties shall convene a mandatory mediation session with Mediator Martin Scheinman as soon as practicable, who shall make a recommendation with regard to modification of the Final Settlement Amount based on any number of factors (e.g. Defendants' ability to pay, the asserted claims and defenses, likelihood of success on the merits, the ability to make it a class action, and the participation level). Within ten (10) days after the issuance of a Mediator's recommendation, and to the extent the recommendation exceeds \$300,000.00, Defendants may terminate this agreement by providing notice via email and overnight mail to Class Counsel. Within five (5) days of termination notice, Plaintiffs may pro rata reduce the Final Settlement Amount to \$300,000.00. Defendants shall be responsible for any costs associated with the Mediator and such session.

4.2 Plaintiffs' Right to Terminate. In the event that Plaintiffs' Due Diligence review (see Section 5) reveals that misrepresentations were made by Defendants upon which Plaintiffs' relied in reaching the instant Agreement, Plaintiffs may terminate this agreement by providing notice via email and overnight mail to Defense Counsel.

- 4.3 Effect of Termination or Failure to Obtain the Approval Order.** In the event that this Agreement is not approved in its entirety by the Court, excluding modifications that the Parties determine in their reasonable and good faith judgment not to be material modifications, or in the event that the settlement set forth in this Agreement is terminated, cancelled, declared void, or fails to become effective in accordance with its terms, the Parties shall proceed as follows:
- A. This Agreement shall be deemed null and void and its terms and provisions shall have no further force or effect.
 - B. Neither this Agreement, nor any other related papers or orders, including certification of the New York Class, may be cited to, used, or deemed admissible in any judicial administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural.
 - C. Litigation shall proceed without prejudice as if this Agreement had not been executed unless the Parties jointly agree to: (1) seek reconsideration or appellate review of the decision denying entry of the Approval Order, or (2) attempt to renegotiate the settlement and seek Court approval of the renegotiated settlement.
 - D. None of the Parties shall be deemed to have waived any claims, objections, defenses, or arguments.
 - E. Notwithstanding any other provision of this Agreement, no order of the Court, or modification or reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to be paid to Class Counsel, or reducing the amount of any Service Payment, shall constitute grounds for cancellation or termination of the Agreement or grounds for limiting any other provision of the Judgment. Class Counsel retains and reserves all rights to appeal or seek reconsideration of any order of the Court reducing the amount of attorneys' fees or costs to be paid to Class Counsel and/or any order of the Court reducing the amount of any Service Payment. Defendant shall not oppose the appeal or motion for reconsideration so long as Class Counsel seeks an amount that does not exceed the amounts contemplated in this Agreement.
 - F. If the Agreement is terminated after Class Notice is sent, the Settlement Claims Administrator shall provide notice to Class Members informing them that the settlement was voided, and that as a result, no payments will be made and that Class Members, whether they submitted a Claim Form or not, retain all rights and privileges under the law, and that litigation in this action will continue. The notice may contain any additional information jointly agreed to by Class Counsel and Defendants, including but not limited to, an explanation of why the Agreement was terminated. Such notice shall be mailed and emailed by the Settlement Claims Administrator via United States First Class Mail, postage prepaid, to the addresses contained on the Class List and/or to any updated address. Class Members whose settlement Notice was returned and for whom there is no updated address need not

be sent the termination notice by mail. The party responsible for terminating the Agreement shall bear the costs of the updated notice, including costs and expenses owed the Settlement Claims Administrator.

5. DUE DILIGENCE

5.1 The Parties agree to the production of documents and information necessary to perform due diligence relating to the merits of Class Members' claims and to ascertain the accuracy of the Class List. Specifically, due diligence will be conducted by Class Counsel to verify that the Class List, Defendants' financial representations, and other material representations appear accurate. Defendants shall produce to Class Counsel within fourteen (14) days of the signing of this Agreement by both email and overnight FedEx delivery, the following items as confidential and for settlement purposes only: (1) any rules, applications, or documents provided to the Class Members during their period of relationship with Defendants, (2) tax returns for the years in the class period, and (3) time records, time reports, sign in sheets and any other documents showing the days that Class Members performed services at Defendants' location. Defendants Amardeep Singh and Gagneet Kaur will also provide a sworn affidavit to be kept confidential and held in escrow by Leeds Brown Law regarding their ability to withstand a greater judgment and confirm the representations made during negotiations.

5.2 Defendants have made certain representations to Plaintiffs and Class Counsel with respect to the Represented Workweeks. Defendants have represented to Class Counsel that the total is approximately 6644. Plaintiffs have relied on Defendants' Represented Workweeks as a condition of entering into this Agreement. For the purpose of verifying the accuracy of this representation, Defendants will produce Review Records to Class Counsel to allow for a confidential review of a representative sample of the Defendants' records to confirm the accuracy of the representation.

5.3 Any dispute regarding the production of the Review Records shall be referred to the Mediator whose decision shall be final and binding.

5.4 Nothing in Section 5.1 is intended to limit the Parties' rights to any discovery, including oral depositions, in the event litigation in this action resumes for any reason set forth in this Agreement.

6. CONSIDERATION AND OTHER PAYMENTS.

6.1 Gross Settlement Amount.

6.2 Defendants agree to pay up to the Final Settlement Amount (subject to their right to terminate as set forth in Section 4.1 and not including any additional employer withholding taxes) for all payments to Authorized Claimants and any Court awarded Costs and Fees.

The following payments shall be made by wire to the Settlement Claims Administrator in accordance with the following:

- A. Defendants shall fund the first payment of \$75,000 by October 1, 2015;
- B. Defendants shall fund the second payment of \$75,000 by November 1, 2015;
- C. Defendants shall fund the third payment of \$75,000 by December 1, 2015;
- D. Defendants shall fund the fourth payment of \$75,000 by January 1, 2016.

If such payments have already been deposited into the escrow account maintained by Defendants' Counsel by the time this Agreement is signed, then Defendants or Defendants' Counsel shall wire such funds into the QSF not later than ten (10) days after the issuance of the Approval Order.

6.3 Reserve Fund. The Settlement Claims Administrator shall set aside Thirty Thousand Dollars (\$30,000.00) of the amount funded in Section 6.2 to cover any errors, late claims, dispute claim, 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). Any Class Member or individual who wishes to challenge any error or omission shall provide a signed, sworn and notarized written statement to Class Counsel, the Settlement Claims Administrator, or Defendants' Counsel as to why such error or omission should be corrected, along with supporting documents, if available. All such claims shall be resolved within 180 days from the mailing of settlement checks. To the extent the Parties are unable to agree on an error or omission, such error or omission may be submitted to the Mediator for final resolution. Approximately every three (3) to four (4) months thereafter, the Settlement Claims Administrator and Class Counsel shall endeavor to resolve all outstanding errors and/or omissions through the Reserve Fund. In the event any sum of monies remain in the Reserve Fund eighteen (18) months after the disbursement of the QSF, any such sum will be donated to charities of Plaintiffs' choosing, including WE CARE FUND, Long Island Cares, Habitat for Humanity, or other reputable charities.

6.4 Deduction of Employer and Employee Payroll Taxes.

- A. All applicable Employer Payroll Tax contributions ordinarily and regularly associated with wage payments, including, but not limited to, the employer share of FICA, FUTA, and SUTA will be paid by the Settlement Claims Administrator out of the QSF. Defendants will provide the Settlement Claims Administrator such information as is necessary for the Settlement Claims Administrator to make proper tax withholdings, issue and file tax-related forms, and comply with all tax reporting obligations.
- B. The Settlement Claims Administrator shall calculate the appropriate and regular tax deductions from each Authorized Claimant's Individual Gross Amount (as calculated by Section 3.5) to determine the Individual Net Amount. The Individual Net Amount will be the amount reflected on the Settlement Checks. Any reduction

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

6.5 Payments from the QSF. The Settlement Claims Administrator shall make the payments from the QSF, in accordance with the schedule as set forth in the Approval Order. Any amounts representing uncashed Settlement Checks, Service Awards, the Reserve Fund, or any other amount remaining in the QSF eighteen (18) months after the disbursement of the QSF, any such sum will be donated to charities as described in Section 6.3.

6.6 Service Awards to Named Plaintiffs.

- A. In return for services rendered to Class Members, Authorized Claimants or the Settlement Class, Named Plaintiffs will apply to the Court to receive Service Awards of no more than Fifteen Thousand Dollars (\$15,000.00) from the QSF, to be divided equally as Seven Thousand Five Hundred Dollars (\$7,500.00) to each.
- 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 outcome of the Court's ruling on the application for Service Awards will not terminate this Agreement or otherwise affect the Court's ruling on the Approval Motion.

6.7 Net Settlement Fund and Allocation to Class Members. Each Authorized Claimant shall be entitled to pay based on the number of weeks he or she worked for Defendants. To calculate this pay, each individual Authorized Claimant's number of workweeks shall be divided by 6644 (which is the represented total number of combined weeks worked by all class members). This results in a percentage that shall be applied to the Net Settlement Fund (Total Settlement Fund minus Attorney's Fees, Costs & Expenses) to determine the Authorized Claimant's recovery amount. To the extent this amount does not exceed \$1,000.00 for particular Authorized Claimants, said individuals shall still receive \$1,000.00 as a minimum payment guaranteed to all Authorized Claimants.

6.8 Amounts Payable as Attorneys' Fees, Expenses and Costs.

- A. In the Approval Motion, Class Counsel will petition the Court for an award of no more than one quarter (25.0%) of the Gross Settlement Fund, which shall include attorneys' fees, costs and expenses incurred in connection with this Action as well as the costs of the Settlement Claims Administrator, Class Counsel's accountants, experts, and all claims administration, including costs of publication. Defendants may not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B. The substance of Class Counsel's application for attorneys' fees, expenses and costs is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Action. The outcome of any proceeding related to Class Counsel's application for attorneys' fees, expenses and costs shall not terminate this Agreement or otherwise affect the

Court's ruling on the Approval Motion.

6.9 Confessions of Judgment & Default.

- A. In connection with the signing of this agreement, Defendants Amardeep Signh and Gagneet Kaur shall each, individually and on behalf of the corporate Defendants, sign confessions of judgment ("Confessions") in the amount of \$300,000.00. Defendants shall provide the Confessions to Martin F. Scheinman, Esq. upon execution of this Agreement. Mr. Scheinman shall release Confessions to Defendants' Counsel upon the full funding of the QSF. Mr. Scheinman shall not release Confessions to Class Counsel under any circumstances unless Defendants fail to make any payment required of them, and further fail to perfect any default within five (5) days after they are notified of such default.
- B. Further, if Defendants fail to make any payment as required pursuant to Section 6.2 then Class Counsel shall provide notice of such missed payment to Defendants' counsel, via email and overnight mail, no earlier than five (5) days after such missed payment ("Notice of Default"). Defendants shall have five (5) days after receipt of Notice of Default to cure such default. If such default is not cured within five (5) days of receipt of the Notice of Default, then Defendants shall pay a penalty of \$5,000 to the Qualified Settlement Fund, and will continue to accrue penalties of \$2,500 per week thereafter for each week such default is not cured.
- C. The Parties agree that the Court will have continuing jurisdiction over any breach of the Agreement, and that Defendants shall pay the reasonable costs, fees, and expenses of pursuing any breach of this Agreement, including this Section 3.7.

6.10 Tax Characterization.

- A. For tax purposes, the payments to Authorized Claimants shall be allocated as follows: wages (50% of each settlement payment), penalties (25% of each settlement payment) and interest (25% of each settlement payment).
- B. The Settlement Claims Administrator shall report wage payments to the respective payees and to the appropriate taxing authorities on an IRS Form W-2. This portion of the settlement payment shall be subject to applicable employment taxes and withholding taxes, as determined by the Settlement Claims Administrator as administrator of the QSF making such payments.
- C. The Settlement Claims Administrator shall report payments for penalties and interest without tax withholdings to the respective payees and to the appropriate taxing authorities on an IRS Form 1099.
- D. The Settlement Claims Administrator shall report payments of any Service Award without tax withholdings to the respective payees and to the appropriate taxing authorities on an IRS Form 1099.

- E. The Settlement Claims Administrator shall report payments of attorneys' fees and costs without tax withholdings to Class Counsel and to the appropriate taxing authorities on an IRS Form 1099.
- F. The Settlement Claims Administrator shall also calculate all employer payroll taxes with respect to the wage payments made pursuant to this Agreement and file all necessary reports as required by law. Defendants shall cooperate with the Settlement Claims Administrator to effectuate payment and proper reporting of employer payroll taxes, including but not limited to the funding of any additional monies into the QSF for payment of employer payroll taxes.
- G. In the event that it is subsequently determined by any taxing authority that any payee owes any additional taxes with respect to any money distributed under this Agreement, it is expressly agreed that liability for such taxes rests exclusively with that payee, and that neither the Parties, Parties' Counsel, nor Settlement Claims Administrator is responsible for the payment of such taxes, including any interest and penalties.

7. FINAL STIPULATION & RELEASE

7.1 Final Stipulation. Not later than fifteen (15) days after the later of (1) Defendants fund the QSF as required by Section 6.1 or (2) the entering of the Approval Order, Plaintiffs will execute and file the fully-executed Final Stipulation as required by the Court to finalize the matter, including entering judgment in accordance with the Agreement and dismissing the action with prejudice.

7.2 Release of Claims.

By operation of the entry of the Final Stipulation Order, and except as to such rights or claims as may be created by this Agreement,

- A. Each individual Class Member who does not timely and validly opt-out pursuant to this Agreement forever and fully releases the Defendants from the claims asserted in the Complaint, including claims arising under the New York Labor Law, regardless of whether such individual files a Claim Form. Each Authorized Claimants shall additionally be deemed to have forever and fully released any claims against Defendants arising under the Fair Labor Standards Act, or any other federal labor laws to the extent allowable by law.
- B. **Additional Claims Released by Named Plaintiffs.** In addition to the claims released under the New York Labor Law, or any other federal labor laws to the extent allowable by law, Named Plaintiffs forever and fully release Defendants and the Releasees from any and all claims, actions, causes of action, lawsuits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies, agreements, promises, claims, charges, complaints and demands whatsoever, whether in law or equity, known or unknown,

which against the Defendants or Releasees Named Plaintiffs and their heirs, executors, administrators, successors, and assigns, ever had, may now have, or hereafter later determine that has or had upon, or by reason of, any cause or thing whatsoever, including, but not limited to, claims arising under the Age Discrimination in Employment Act (“ADEA”), Americans With Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee Retirement Income Security Act of 1974, including but not limited to, breach of fiduciary duty and equitable claims to be brought under §1132(a)(3) (“ERISA”), the Worker Adjustment and Retraining Notification Act, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act, and/or any other federal, state or local human rights, civil rights, wage-hour, pension or labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or any claim of retaliation under such laws, or any claim of breach of any contract (whether express, oral, written or implied from any source), or any claim of intentional or negligent infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice, breach of duty of care, breach of fiduciary duty or any action similar thereto against Defendant or Releasees, including any claim for attorneys’ fees, expenses or costs based upon any conduct from the beginning of the world up to and including the date that Named Plaintiffs executed this General Release; provided, however, Named Plaintiffs do not waive any right to file an administrative charge with the Equal Employment Opportunity Commission (“EEOC”), subject to the condition that he agrees not to seek, or in any way obtain or accept, any monetary award, recovery or settlement therefrom; and further provided, however, that Named Plaintiffs do not release any claim for breach of the terms of the Agreement.

- (1) This Settlement is intended to include in its effect all claims identified in this Section, including claims that Named Plaintiffs do not know or suspect to exist in his or her favor against Defendants or Releasees at the time of the release. Named Plaintiffs shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits he may otherwise have had relating to the claims identified in this Section 4.1(C).
- (2) Nothing in this Release shall prohibit or restrict Named Plaintiffs from: (i) providing information to, or otherwise assisting in, an investigation by Congress, the Equal Employment Opportunity Commission, the Securities and Exchange Commission (“SEC”) or any other federal regulatory or law enforcement agency in response to any request for information by such agency; (ii) complying with a lawful subpoena or other legal process,

subject to the terms of this Agreement; or (iii) engaging in any conduct that is required or protected by law.

- (3) Named Plaintiffs further covenant that they will not participate in any other legal actions against Defendants relating to claims released by this Settlement, and will not opt-in and will withdraw any opt-in if they become aware of such actions.
- C. By operation of the entry of the Final Stipulation, Defendants shall be deemed to have and shall fully, finally, and forever released, relinquished, and discharged Named Plaintiff 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 claims released in connection with this Agreement.
 - D. Except as provided in this Agreement, Class Counsel and Named Plaintiffs, on behalf of the Class Members individually and collectively, hereby irrevocably and unconditionally release, acquit, and forever discharge any claim that he, she or they may have against Defendants for attorneys' fees or costs associated with Class Counsel's representation of Named Plaintiffs and Class Members. Class Counsel further understands and agrees that any fee payments approved by the Court will be the full, final and complete payment of all attorneys' fees and costs associated with Class Counsel's representation in the Litigation.

8. MISCELLANEOUS PROVISIONS

- 8.1 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.
- 8.2 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.
- 8.3 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 Named Plaintiff and all Class Members in this Action, this agreement is binding.

- 8.4 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.
- 8.5 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.
- 8.6 Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New York, without regard to choice of law principles, 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.
- 8.7 Continuing Jurisdiction.** The Parties shall request the Court to retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the settlement contemplated thereby.
- 8.8 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.
- 8.9 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.
- 8.10 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.

- 8.11 **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.
- 8.12 **Consultation and Authority.** Counsel for Named Plaintiffs warrants and represents that they have consulted with Named Plaintiffs and have full authority to enter into this Agreement on behalf of Named Plaintiffs and the Settlement Class.

WE AGREE TO THESE TERMS,

S&S Sports Inc.
 By: [Signature]
 Title: PRESIDENT
 Print Name: AMARDEEP SINGH
 Dated: 1/18, 2016

Sidanah, Inc.
 By: [Signature]
 Title: PRESIDENT
 Print Name: AMARDEEP SINGH
 Dated: 1/18, 2016

Amardeep Singh
 By: [Signature]
 Dated: 1-18-2016 2016

Gagneet Kaur
 By: [Signature]
 Dated: 1-18-, 2016

Approved as to Form:

Gary Schoer, Esq.
 By: [Signature]
 Gary Schoer, Esq.

Dated: 1/18, 2016

Melvin Cifuentes Lemus

By: 

Dated: 1/22/, 2016

Carlos Enrique Chacon

By: CARLOS CHACON

Dated: 1/22, 2016

Approved as to Form:

Leeds Brown Law, P.C.

By: 
Jeffrey K. Brown, Esq.

Dated: 1/22, 2016