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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

BRIAN KEIM, on behalf of himself and all others similarly situated,)	
)	
Plaintiff,)	Case No. 9:12-cv-80577-KAM
)	
v.)	Hon. Judge Kenneth A. Marra
)	
ADF MIDATLANTIC, LLC, et al.,)	Magistrate Judge William Matthewman
)	
Defendants.)	
)	

SETTLEMENT AGREEMENT AND RELEASE

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This Settlement Agreement and Release (“Agreement”) is entered into between and among the following parties (the “Parties”), by and through their respective counsel: Brian (“Keim” or “Class Representative” or “Named Plaintiff”), on behalf of himself and the Settlement Class (as hereinafter defined), and ADF Midatlantic, LLC, American Huts Inc., ADF Pizza I, LLC, ADF PA, LLC (collectively, the “Franchise Defendants”) and Pizza Hut, LLC, (“Pizza Hut,” and collectively with the Franchise Defendants, “Defendants”). This Agreement fully and finally compromises and settles any and all claims that were or could have been asserted in the lawsuit styled as *Keim v. ADF Midatlantic LLC et al*, Case No. 9:12-cv-80577-KAM (S.D. Fla.) (“Litigation”) and all claims that relate to or arise out of the Franchise Defendants allegedly sending automated text messages to individuals’ cell phones without consent during the Settlement Class Period, including all claims under the Telephone Consumer Protection Act (“TCPA”);

WHEREAS, on May 27, 2012, Keim, individually and on behalf of a putative class, filed the Complaint in the United States District Court for the Southern District of Florida, alleging a willful violation of the TCPA against the Franchise Defendants;

WHEREAS, on March 25, 2015, Keim filed an amended pleading naming Pizza Hut as a defendant in this action, along with the Franchise Defendants;

WHEREAS, on June 10, 2015, Keim filed the Second Amended Complaint, which is the operative pleading in this case;

WHEREAS, Keim alleges that Defendants caused promotional text messages to be sent to individuals whose telephone number was provided by a third-party without consent in violation of the TCPA;

WHEREAS, Keim alleges that he and other similarly situated individuals are entitled to statutory damages as a result;

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WHEREAS, Defendants produced discovery about the merits of the case and the class, including the number of affected consumers who allegedly received the text messages at issue, that caused the alleged TCPA violations to occur, and the third parties involved in the same;

WHEREAS, the Litigation has been extensive and has spanned years including, an appeal to the Eleventh Circuit after the Court dismissed the Litigation and an appeal to the Eleventh Circuit concerning the Court's order certifying the class;

WHEREAS, on December 4, 2018, the Court granted Keim's motion for class certification, with modification;

WHEREAS, class notice has not yet been distributed;

WHEREAS, Pizza Hut contends that it cannot be held directly or vicariously liable for the messages at issue and moved for summary judgment on May 23, 2019, which motion remains pending;

WHEREAS, on August 7, 2019, the Parties attended in-person mediation with the Honorable Judge James Holderman (ret.), who is a highly-regarded former federal judge and professional mediator with JAMS, in Chicago;

WHEREAS, at the time of the mediation, discovery was closed and Pizza Hut's motion for summary judgment and Defendants' motion to decertify the class were pending;

WHEREAS, the Parties were unable to reach an agreement during the mediation, but agreed to continue discussions over the course of the following weeks;

WHEREAS, the Parties reached a class wide settlement on August 29, 2019.

WHEREAS, the Parties have engaged in substantial arms-length negotiations to resolve the Litigation and all claims made against Defendants with a view by Keim's counsel toward

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achieving substantial benefits for the Settlement Class, and by all Parties to avoid the cost, delay, and uncertainty of further litigation, trial, and appellate practice;

WHEREAS, based on discovery and the experience of Class Counsel, the Class Representative and Class Counsel have concluded that the terms and conditions of this Agreement are fair, reasonable, and adequate to the Settlement Class and in the best interest of the Settlement Class;

WHEREAS, the Class Representative, on behalf of himself and as the representative of the Settlement Class, and Defendants desire to resolve the dispute between them;

WHEREAS, Defendants deny any fault, wrongdoing, or liability to Keim, or the Settlement Class Members for any relief, but believe the proposed settlement herein is desirable in order to avoid the further significant burden, expense, risk, and inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources.

WHEREAS, this settlement has been entered into after the 11th Circuit's rulings in *Salcedo v Alex Hana*. If the Court or the Eleventh Circuit determines there is no Article III standing for this Litigation, including the approval process for this Settlement, the Parties agree that this settlement shall proceed in state court in Cook County, Illinois.

NOW, THEREFORE, in exchange for the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties and their counsel agree that the Litigation and claims are settled on the terms and conditions set forth below, subject to Court approval after a hearing and on finding that the instant settlement is fair, reasonable, and adequate.

I. SETTLEMENT CLASS DEFINITION

The Court has previously certified the following Class:

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All persons in the United States who received a text message from Defendants wherein their cellular telephone number was provided by a third party and said text messages were sent using hardware and software owned or licensed to Songwhale or Cellit between November 2010 and January 2013. Excluded from the class are all persons who received a text message from Defendants wherein their cellular telephone number was provided by a subscriber of the calling plan.

Persons in the above class are collectively referenced herein as the “Settlement Class,” and individually as “Settlement Class Members.” Excluded from the Class are Defendants, their legal representatives, assigns, and successors, and any entity in which the Defendants have a controlling interest. Also excluded from the Class is the Judge to whom this case is assigned as well as the Judge’s immediate family, and any individual who opts out of the Settlement Class as described below.

II. OTHER DEFINITIONS

As used in this Agreement, the following terms have the meanings set forth below. Terms used in the singular shall include the plural and vice versa.

- A. “Agreement” means this Agreement and all attachments and exhibits hereto, which the Parties understand and agree set forth all terms and conditions of the Settlement between them and which is subject to Court approval. It is understood and agreed that Franchise Defendants’ obligations for payment under this Agreement are conditioned on, among other things, Final Approval.
- B. “Claims Administrator” shall mean Kurtzman Carson Consultants LLC (“KCC”) which, subject to Court approval, shall be responsible for administrative tasks, including, without limitation: (a) arranging for distribution of the Class Notice and Settlement Claim Forms to Settlement Class Members; (b) making any mailings to Settlement Class Members required under the terms of this Agreement;

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(c) forwarding written inquiries from Settlement Class Members to Class Counsel or their designee; (d) receiving and maintaining on behalf of the Court and the Parties any Settlement Class Member correspondence regarding requests for exclusion from the Settlement; (e) establishing the Settlement Website that posts notices, Settlement Claim Forms, and other related documents; (f) receiving and processing Settlement Claims Forms and distributing payments to Settlement Class Members; (g); and otherwise assisting with implementation and administration of the terms of this Agreement.

C. “Claims Deadline” shall have the same meaning as set forth in the Preliminary Approval Order issued by the Court, in substantially the form attached hereto as **Exhibit 1**, the date of which shall be sixty (60) days after the deadline for Full Notice to be sent to Settlement Class Members.

D. “Class Counsel” means:

Keith J. Keogh (Fla. Bar No. 126335)
Amy L. Wells
KEOGH LAW, LTD
55 W. Monroe St., Suite 3390
Chicago, IL 60603

Scott D. Owens, Esq. (Fla. Bar No. 0597651)
SCOTT D. OWENS, P.A.
3800 S. Ocean Dr., Ste. 235
Hollywood, FL 33019
Scott D. Owens
Scott D. Owens, P.A.
3800 S. Ocean Drive
Suite 235
Hollywood, FL 33019

E. “Class Notice” means the notice of the settlement to be sent to class members in the form or forms approved by the Court. This includes a “Postcard Notice” that shall be sent to all class members by first class mail as provided below. The Parties

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agree to propose approval of the form Postcard Notice attached as **Exhibit 2**. This also includes a “Long Form Notice” that shall be posted on the Settlement Website. The Parties agree to propose approval of the form Long Form Notice attached as **Exhibit 3**.

- F.** “Class Representative” or “Named Plaintiff” refers to Plaintiff Brian Keim.
- G.** “Complaint” means the original complaint filed in this lawsuit dated May 27, 2012, that was filed with the Court in this Litigation.
- H.** “Counsel for Defendants” means:
- David S. Almeida, Esq.
Mark S. Eisen, Esq.
BENESCH, FRIEDLANDER,
COPLAN & ARONOFF LLP
333 W. Wacker Drive,
Suite 1900
Chicago, IL 60606
- Jordon S. Kosches, Esq.
GRAYROBINSON, P.A.
333 SE 2nd Avenue, Suite 3200
Miami, Florida 33131
- I.** “Court” means the United States District Court for the Southern District of Florida, where the Litigation is pending.
- J.** “Effective Date” means the date on which the Order of Final Approval becomes Final.
- K.** “Fairness Hearing” means a hearing set by the Court to take place no sooner than 200 days after entry of the Preliminary Approval Order for the purpose of:
- (i) determining the fairness, adequacy, and reasonableness of this Agreement and associated settlement pursuant to class action procedures and requirements; and
- (ii) entering the Order of Final Approval.

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- L.** “Final” or “Finally Approved” or “Final Approval” of this Agreement means the later of the date that (i) the time has run for any appeals from the Order of Final Approval or (ii) any such appeals have been resolved in favor of approving, or affirming the approval of, this Agreement.
- M.** “Full Notice” shall mean the Postcard Notice mailed to the class members, and the Longform Notice posted on the Settlement Website, in substantially the forms attached as **Exhibits 2 and 3**, respectively, to this Agreement. Full Notice shall be effectuated not less than ninety (90) days before the date set by the Court for the Final Approval Hearing.
- N.** “Incentive Payment” means any approved payment to the Class Representative that is further described in Section III(F)(2) of this Agreement.
- O.** “Objection Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Settlement Class Member must serve written objections, if any, to the Settlement in accordance with Section IV(B)(5) of this Agreement to be able to object to the Settlement. The Objection Deadline shall be sixty (60) days after the deadline for the Full Notice to be sent to Settlement Class Members.
- P.** “Opt-Out Deadline” means the date identified in the Preliminary Approval Order and Class Notice by which a Request for Exclusion must be filed in writing with the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class. The Opt-Out Deadline shall be no later than sixty (60) days after the deadline for the Postcard Notice to be sent to Settlement Class Members.

- Q.** “Order of Final Approval” or “Final Approval Order” means the order entered by the Court that: (a) approves this Agreement, (b) finds the settlement to be fair, reasonable, and adequate in accordance with the Federal Rules of Civil Procedure, (c) makes such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement, including ruling on Class Counsel’s application for attorneys’ fees and expenses, the Incentive Payments for the Class Representatives, and (d) dismisses with prejudice the claims of the Class Representative and all Settlement Class Members who do not opt out as provided by this Agreement. The Parties agree to propose entry of the form of Order of Final Approval attached as **Exhibit 4**.
- R.** “Parties” means Plaintiff, Settlement Class Members who do not opt out and Defendants.
- S.** “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.
- T.** “Preliminary Approval Order” means an order entered by the Court provisionally certifying the Settlement Class and granting preliminary approval to the settlement. The Parties agree to propose entry of the form of Preliminary Approval Order attached as **Exhibit 1**.
- U.** “Protective Order” means the stipulated confidentiality agreement and order governing the exchange of confidential information that the Parties will collectively request that the Court enter at the time of Plaintiff’s motion for preliminary approval.
- V.** “Release” means all of the releases contained in this Agreement.

- W.** “Released Claims” means any and all claims, actions, causes of action, rights, suits, defenses, debts, sums of money, payments, obligations, promises, damages, penalties, attorneys’ fees, costs, liens, judgments, and demands of any kind whatsoever, whether at law or equity, that each member of the Settlement Class may have or may have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether past or present, mature or not yet mature, known or unknown, suspected or unsuspected, whether based on federal, state, or local law, statute, ordinance, regulation, contract, common law, or any other source, that were or could have been asserted in the Litigation against the Releasees in connection with, relating to or arising from any communications and/or telephone calls or text messages received from or initiated by Defendants or the Releasees. This shall include, but not be limited to, any claimed violation(s) of the TCPA, or any federal, state, and/or common laws governing the use of an automatic telephone dialing system and/or calls or texts to cellular phones, and the tort of Invasion of Privacy by Intrusion Upon Seclusion, known or unknown, through the Preliminary Approval Date.
- X.** “Releasees” means and refers to the Defendants ADF Midatlantic, LLC, American Huts Inc., ADF Pizza I, LLC, ADF PA, LLC and Pizza Hut, LLC, and their subsidiaries, parent companies, agents, vendors, predecessors in interest and/or ownership, successors in interest and/or ownership, affiliates of the Franchise Defendants and Pizza Hut, partners, licensees, assignees, insurers, including claims under any and all insurance policies, and estates, and each of the

foregoing's respective past, present, and future officers, directors, attorneys, shareholders, indemnitees, predecessors, successors, trusts, trustees, partners, associates, principals, divisions, employees, insurers, any and all insurance policies, members, managers, agents, representatives, brokers, consultants, heirs, and assigns.

- Y.** "Releasing Settlement Class Members" means Keim and all Settlement Class Members, other than those who submit timely and proper Opt-Out Requests, and each of their respective executors, representatives, heirs, spouses, partners, predecessors, assigns, beneficiaries, successors, bankruptcy trustees, agents, attorneys, and all those who claim through them or on behalf, and, if relevant, any co-signer, co-buyer, or co-borrower or guarantors.
- Z.** "Request for Exclusion" means the written request that Settlement Class Members are required to timely submit in order to opt out of the Settlement Class and this Settlement Agreement.
- AA.** "Settlement Amount" means the six million dollars (\$6,000,000.00) Settlement Fund that the Franchise Defendants have agreed to make available on behalf of all Defendants to settle this case pursuant to this Agreement. This represents the total maximum amount of Defendants' obligation—to be paid by the Franchise Defendants—to make payments pursuant to this Agreement. The Parties further agree that the Franchise Defendants are the only Parties that are obligated to make any payments under the terms of this Agreement, that Pizza Hut has no obligation to make available or to pay anything to settle this case pursuant to this Agreement, and that the Class Representative and all Releasing Settlement Class Members are

barred from seeking any such payment from Pizza Hut. The Franchise Defendants need not segregate funds or otherwise create special accounts to hold the Settlement Amount and will not relinquish control of any money except as detailed herein. Responsibility for the Settlement Amount and Settlement Payments shall be apportioned 60% to ADF Midatlantic, LLC, ADF Pizza I, LLC and ADF PA, LLC, collectively, and 40% to American Huts Inc., except that each Franchise Defendant shall be jointly and severally liable for the entire Settlement Amount.

- BB.** “Settlement Claim Form” means an electronic or paper document, in the form approved by the Court, to be completed by Settlement Class Members and submitted to the Claims Administrator to receive a share of the settlement. The Parties agree to propose approval of the Settlement Claim Form attached as **Exhibit 5**.
- CC.** “Settlement Class List” means the list of individuals falling within the Settlement Class.
- DD.** “Settlement Class Period” means the time period between November 2010 and January 2013.
- EE.** “Settlement Claim Payments” means the amount necessary to pay total timely and approved claims by Settlement Class Members.
- FF.** “Settlement Payments” means the payment necessary to cover (i) Settlement Claim Payments, (ii) attorneys’ fees and costs approved by the Court, (iii) any Incentive Payment, and (iv) the costs of notice and administration. The Franchise Defendants shall make the Settlement Payments as set forth herein, but in no event shall the Settlement Payments exceed the Settlement Amount.

GG. “Settlement Website” means the website prepared by the Claims Administrator in connection with the process of providing notice to Settlement Class Members as further described in Section II(B) of this Agreement.

III. SETTLEMENT TERMS

A. Funding the Settlement

In full and final settlement of the claims of all Settlement Class Members, the Franchise Defendants shall, on behalf of the Defendants, pay the Settlement Payments up to but no more than the Settlement Amount. The Settlement Payments shall exhaust and fully satisfy any and all payment obligations of Defendants under this Settlement Agreement, and shall extinguish entirely any further obligation, responsibility, or liability to pay any additional expenses, costs, sums, taxes, or payments of any kind to the Class Representative, the Settlement Class Members, the Settlement Administrator, or to any of their respective counsel, experts, advisors, agents, and representatives.

The Franchise Defendants shall, on behalf of the Defendants, pay the Settlement Payments to the Claims Administrator within thirty (30) days after the Effective Date. Any part of the Settlement Amount that is not used to make the Settlement Payments shall remain the property of the Franchise Defendants. The Settlement Amount and structure of this Settlement are material terms.

B. All Released Claims Satisfied by Settlement Fund

Each Settlement Class Member shall look solely to the Settlement Payments for settlement and satisfaction of all Released Claims as provided in this Agreement.

C. Settlement Fund

The Settlement Fund shall consist of the \$6,000,000 Settlement Amount made available to pay Settlement Payments including each Settlement Class Member who submits a timely and

accepted Settlement Claim for a single payment for any and all texts received from Defendants without prior express consent between November 2010 and January 2013. The maximum payment to any Settlement Class Member who submits a timely and accepted Settlement Claim Form under this Settlement shall not exceed \$400. Should the Settlement Claim Payments, when combined with the remainder of the Settlement Payments, exceed the Settlement Amount, the Settlement Claim Payments will be reduced on a pro rata basis such that the Settlement Amount is not exceeded.

The distribution for any valid claim shall be as follows:

- i. Settlement awards shall be paid by check. The Claims Administrator shall mail, by first-class mail, a check to each claiming Settlement Class Member with a timely and approved claim within 45 days after the Effective Date. Checks will be valid for 120 days from the date on the check.
- ii. Remaining Funds. Any amounts remaining as a result of uncashed checks shall be sent to a Cy Pres the parties agree on subject to Court approval or if the parties cannot agree, the Cy Pres approved by the Court after the Parties submit their recommendation to the Court.

D. Attorneys' Fees and Class Representative Incentive Payment

The Franchise Defendants shall, on behalf of the Defendants, pay the Settlement Payments to the Claims Administrator within thirty (30) days after the Effective Date. To the extent that the Court orders an award of attorneys' fees and expenses to any Class Counsel, or an Incentive Payment to the Class Representative, such awards will be paid from the Settlement Fund within forty-five (45) days after the Effective Date.

1. Attorneys' Fees and Expenses

Class Counsel will petition the Court for an award of reasonable attorneys' fees, which shall be inclusive of all costs and expenses, to be paid solely from the Settlement Amount. This award shall be Class Counsel's total recovery for attorneys' fees, costs, and adequately supported expenses of any kind (including, but not limited to, mediation fees, travel, filing fees, court reporter, and videographer expenses, expert fees and costs, subpoena costs, and document review and production costs). Class Counsel shall be responsible for allocating and shall allocate all attorneys' fees that are awarded by the Court among Class Counsel, and Defendants shall have no responsibility, role, or liability in connection with such allocation. The Full Notice shall advise the class on the amount sought. Defendants retain the right to object to Class Counsel's petition.

2. Class Representative Incentive Payment

Class Counsel will petition the Court for an Incentive Payment for the service to the Settlement Class and the time and effort that the Class Representative personally invested in this Litigation, to be paid solely from the Settlement Amount. The Full Notice shall advise the class on the amount sought. Defendants retain the right to object to Class Counsel's petition.

G. Motion for Preliminary Approval

Concurrent with submission of this Agreement for the Court's consideration, Class Counsel shall submit to the Court a motion for preliminary approval of this Agreement. The motion, which shall be provided to Defendants at least 7 days prior to filing, shall seek entry of a Preliminary Approval Order substantially in the form attached hereto as **Exhibit 1**.

IV. CLAIMS ADMINISTRATION

A. Claims Administrator

The Claims Administrator shall be responsible for disseminating information to Settlement Class Members concerning settlement procedures. In addition, the Claims Administrator shall (i) process Requests for Exclusion, (ii) receive all opt-out forms and documentation, (iii) receive, process, classify, and pay claims as provided in this Agreement and any applicable orders of the Court, and (iv) operate under the continuing supervision of the Court. The Class Administrator will invoice the Franchise Defendants directly for start-up and initial Class Notice costs at any time after entry of the Preliminary Approval Order and will bill the Franchise Defendants monthly for incurred fees and expenses thereafter. The Class Administrator will complete and provide to the Franchise Defendants any W9 forms necessary for the Franchise Defendants to pay for the costs of notice and administration. The Parties agree that Pizza Hut has no obligation to pay for any of the services provided by the Class Administrator and that the Class Administrator may not seek any such payments from Pizza Hut

B. Notice

1. Settlement Class List

Within 7 days of the Preliminary Approval Date, Class Counsel shall provide the Claims Administrator the Class List, along with mailing addresses Class Counsel has identified to date. Within 21 days thereafter, the Claims Administrator shall perform a reverse look-up to identify any addresses that Class Counsel was unable to identify.

2. Mailing

A copy of the Postcard Notice substantially in the form attached hereto as **Exhibit 2** shall be mailed by first class U.S. mail to every Settlement Class Member for which there is address

information, by the deadline established by the Preliminary Approval Order, which shall be at least 14 days after the deadlines established in Section IV(B)(1). Such mailing shall be completed by the Claims Administrator.

3. Settlement Website

By the deadline for disseminating the Class Notice, the Claims Administrator shall establish and maintain the Settlement Website, which, among other things, (i) enables Settlement Class Members to submit a claim and access and download the Settlement Claim Form; (ii) provides contact information for Class Counsel, and (iii) provides access to relevant documents. Such documents shall include this Agreement and Class Notice; the Preliminary Approval Order; the Complaint; and, when filed, the Order of Final Approval. The Class Notice shall include the address (URL) of www.PizzaTCPAsettlement.com for the Settlement Website. The Claims Administrator shall maintain the Settlement Website until at least 45 days following the mailing of settlement checks to the Settlement Class Members.

4. IVR

By the deadline for mailing the Class Notice, the Claims Administrator shall establish and maintain a toll free number that maintains an IVR system to answer questions and allow Settlement Class Members who have a claim ID form received through the Postcard Notice to submit a claim and to verify membership in the Settlement Class, subject to penalty of perjury.

5. Opt-Out

The Full Notice shall provide a procedure whereby Settlement Class Members may exclude themselves from the Settlement Class by mailing a Request for Exclusion by the Opt-Out Deadline. Any Settlement Class Member who does not validly and timely submit a Request for Exclusion

before the Opt-Out Deadline shall be deemed a Settlement Class Member and shall be bound by the terms of this Agreement and all subsequent proceedings, orders, and judgments.

To be valid, the Request for Exclusion must: (a) identify the case name; (b) identify the name and address of the Settlement Class Member; (c) identify the telephone number of the Settlement Class Member at which the message(s) at issue were received; (d) be personally signed by the Settlement Class Member requesting exclusion; and (e) contain a statement that indicates a desire to be excluded from the Settlement Class in the Litigation, such as “I hereby request that I be excluded from the proposed Settlement Class in *Keim v. ADF Midatlantic, LLC, et al*, Case No. 9:12-cv-80577-KAM.” Class, mass and group Requests for Exclusion are prohibited. Any Settlement Class Member who does not opt out of the Settlement in the manner described herein shall be deemed to be part of the Settlement Class, and shall be bound by all subsequent proceedings, orders, and judgments. A Settlement Class Member who desires to opt out must take timely affirmative written action pursuant to this Agreement, even if the Settlement Class Member desiring to opt out of the Settlement Class (a) files or has filed a separate action against any of the Releasees, or (b) is, or becomes, a putative class member in any other class action filed against any of the Releasees

6. Objections

The Full Notice, shall also describe the procedure for Settlement Class Members to object to the settlement set forth herein and any of its terms. Objections must be received by the Objection Deadline. To be valid, the written objection must include: (a) the case name and caption, *Keim v. ADF Midatlantic, LLC, et al*, Case No. 9:12-cv-80577-KAM; (b) the name, address, and telephone number of the Settlement Class Member objecting and, if represented by counsel, of his/her counsel; (c) the telephone number of the Settlement Class Member at which the message(s) at

issue were received; (d) a description of the specific basis for each objection raised; (e) a list of any other objections filed in any court for the past five (5) years; (f) if he or she is represented by counsel, a list of objections filed by that counsel in any court for the past (5) years; (g) any and all agreements that relate to the objection or the process of objecting—whether written or oral—between objector or objector’s counsel and any other person or entity; and (h) a statement of whether he/she intends to appear at the Final Approval Hearing, either with or without counsel. Class, mass and group objections are prohibited. Any Settlement Class Member who fails to object to the Settlement in the manner described in the Class Notice and consistent with this Section shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

7. Non-Approval of Agreement

This Agreement is conditioned on Final Approval without material modification by the Court. In the event that the Agreement is not so approved, the Parties shall have the right to withdraw from the Agreement and return to the status quo ante as of the date of this Agreement, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of the date of the Agreement, and shall not be deemed to have waived any substantive, evidentiary, procedural, or other rights of any kind that they may have as to each other or any member of the Settlement Class. This Settlement, for purposes of clarification, is not dependent or conditioned upon the Court approving Plaintiff’s request for an Incentive Payment and/or Class Counsel’s requests for attorneys’ fees and expenses, or awarding the particular amounts sought by Plaintiff and/or Class Counsel. In the event the Court

declines Plaintiff's and/or Class Counsel's requests or awards less than the amounts sought, the settlement will continue to be effective and enforceable.

In the event that the Agreement is approved without material modification by the Court, but is later reversed or vacated on appeal, each of the Parties shall have a right to withdraw from the Agreement and return to the status quo ante as of the date of this Agreement, for all litigation purposes, as if no Agreement had been negotiated or entered into, and shall not be deemed to have waived any substantive, evidentiary, procedural, or rights of any kind that they may have as to each other or any member of the Settlement Class.

8. Defendants' Rights to Terminate Agreement

Defendants' willingness to settle this Litigation on a classwide basis and to agree to the certification of the Settlement Class is dependent upon achieving finality in this Litigation, and the desire to avoid further expense in this Litigation. Consequently, Defendants shall have the right in its sole discretion to terminate this Settlement Agreement, declare it null and void, and have no further obligations under this Settlement Agreement to Plaintiff, Settlement Class Members or Class Counsel if any of the following conditions subsequently occurs: (1) the Court fails or declines to grant Preliminary Approval pursuant to the terms of the Preliminary Approval Order; (2) the Court fails or declines to grant Final Approval pursuant to the terms of the Final Approval Order; (3) the Effective Date does not occur for any reason, including the entry of an order by any court that would require either modification or termination of the Settlement Agreement or Final Approval Order; (4) if the percentage of Settlement Class Members who properly and timely exercise their right to opt out of the Settlement Class exceeds 10% of the total number of Settlement Class Members, (5) any of the other conditions described in this Settlement, including any Exhibits, as a basis for termination or cancellation occur.

9. CAFA Notice

Defendants, through the Class Administrator, will serve notices under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, within the timelines specified by 28 U.S.C. § 1715(b).

C. Claims Process

In order to make a claim, a Settlement Class Member must submit a completed Settlement Claim Form in compliance with the procedures set forth in the Class Notice, Preliminary Approval Order, and Order of Final Approval. All Settlement Claim Forms must be submitted by the Claims Deadline as set forth in the Class Notice. To constitute a valid claim, the contact information provided by the Settlement Class Member must match one of (i) the phone number, (ii) name and/or (iii) address in the Settlement Class List. The Claims Administrator shall be responsible for evaluating claims against the Class List and shall provide to Class Counsel and Counsel for Defendants any rejected claims. Any Settlement Claim Form submitted after the Claims Deadline shall be deemed an untimely and invalid claim.

D. Information

At least fourteen days (14) prior to the Final Approval, the Claims Administrator shall prepare and disseminate to counsel an initial list that shall identify each Settlement Class Member that files a timely and approved Settlement Claim Form; the anticipated Settlement Class Payments under the Agreement; the deliverable address for each Settlement Class Member that files a timely and approved Settlement Claim Form; and any Settlement Class Members who have opted out of the Settlement Class.

E. Distribution

The Claims Administrator shall distribute the Settlement Payments in accordance with the terms of this Agreement by: (a) paying any Incentive Award to the Named Plaintiff and any

attorneys' fees (inclusive of costs and expenses) to Class Counsel within forty-five (45) days after the Effective Date; and (b) making any Settlement Claim Payments within forty-five (45) days after the Effective Date.

F. Retention of Records

The Claims Administrator shall retain all records relating to payment of claims under this Agreement for a period of five (5) years from the Effective Date. The confidentiality of those records shall be maintained in accordance with the Preliminary Approval Order.

V. EXCLUSIVE REMEDY/DISMISSAL OF CLAIMS/JURISDICTION

A. Exclusive Remedy

This Agreement shall be the exclusive remedy for any and all Released Claims, any claim arising out of the subject matter of this Agreement, and any complaint by the Settlement Class or any Settlement Class Member related to the Released Claims. This Agreement shall be binding upon, and inure to the benefit of the Parties' successors and assigns.

B. Dismissal of Claims

The Parties agree that upon the Effective Date, the Litigation shall be dismissed with prejudice in accordance with the Order of Final Approval, substantially in the form attached hereto as **Exhibit 4**.

C. Continuing Jurisdiction of Court

The Court shall retain exclusive and continuing jurisdiction over this Litigation, the Parties, and this Agreement with respect to the performance of its terms and conditions (and disputes arising out of or relating to this Agreement), the proper provision of all benefits, and the implementation and enforcement of its terms, conditions, and obligations.

VI. RELEASES

A. Upon the Effective Date of this Agreement, the Releasing Settlement Class Members shall release and forever discharge the Releasees from the Released Claims. The Settlement Class and each Settlement Class Member covenant and agree that they shall not hereafter seek to establish liability against any of the Releasees based, in whole or in part, on any of the Released Claims.

B. The Released Claims also include a release of all the claims for Attorneys' Fees, costs and expenses incurred by Releasing Settlement Class Members or by the Class Counsel or any other attorney in connection with the Litigation, and this Settlement, and all claims related to conduct in discovery in the Litigation.

C. Releasing Settlement Class Members understand and agree that the release of the Released Claims is a full and final general release applying to both those Released Claims that are currently known, anticipated, or disclosed to Releasing Settlement Class Members and to all those Released Claims that are presently unknown, unanticipated, or undisclosed to any Releasing Settlement Class Members arising out of the alleged facts, circumstances, and occurrences underlying the claims set forth in the Litigation. Releasing Settlement Class Members acknowledge that the facts could be different than they now know or suspect to be the case, but they are nonetheless releasing all such unknown claims. In exchange for the good and valuable consideration set forth herein, all Releasing Settlement Class Members further waive any and all rights or benefits that they as individuals or as Settlement Class Members may now have as a result of the alleged facts, circumstances, and occurrences underlying the claims set forth or that could have been set forth in the Litigation under the terms of Section 1542(a) of the California Civil Code (or similar statute in effect in any other jurisdiction), which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

D. The Parties acknowledge that this Settlement, including the releases provided in this section, reflects a compromise of disputed claims.

E. The Final Approval Order shall dismiss the Litigation with prejudice and shall incorporate the terms of this release.

VII. MISCELLANEOUS PROVISIONS

A. Cooperation to Facilitate this Settlement

The Parties agree that they shall work together in good faith to facilitate this Agreement, as well as undertake any required steps to effectuate the purposes and intent of this Agreement.

B. Representation by Counsel

The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

C. No Admission of Liability

Nothing in this Agreement, or the Parties' willingness to enter into this Agreement, shall be construed as an admission by any person or entity, of any liability or wrongdoing of any Party, or of the truth of any allegations made by the Class Representative, on behalf of himself or the Settlement Class, against Defendants, or the propriety of certifying the class or providing notice in an adversarial context. Defendants expressly deny and disclaim any liability or wrongdoing. The existence, contents, and terms of Agreement, and any negotiations, statements, or proceedings in connection therewith, shall not be admissible as evidence for any purpose in any proceeding,

except solely for purposes of enforcement of the Agreement's terms; however, this Agreement may be used by either Party and pleaded as a full and complete defense to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to any of the Released Claims, and may be filed, offered, and received into evidence, and otherwise used for such defense.

D. Contractual Agreement

The Parties understand and agree that all terms of this Agreement are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

E. Change of Time Periods

The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by written agreement of Class Counsel and Counsel for Defendants, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to Court approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Agreement.

F. Integration

This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof. This Agreement supersedes all prior representations, agreements, understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter of this Agreement. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein, and no Party is relying on any prior oral or written representations,

agreements, understandings, or undertakings with respect to the subject matter of this Agreement. This Agreement does not impact the validity of any preexisting arbitration or warranty agreements between Defendants and any Settlement Class Members.

G. Taxes

Defendants shall not be obligated to compute, estimate, or pay any taxes on behalf of Named Plaintiff, any Settlement Class Member, Class Counsel, and/or the Class Administrator. The Class Administrator shall collect tax information from the Named Plaintiff, any Settlement Class Member and/or Class Counsel as necessary or required by law. The Class Administrator will also collect and provide to the Franchise Defendants any and all necessary tax documentation, including W9 forms, to effectuate the Settlement Payments.

H. Drafting

The Parties agree that no single Party shall be deemed to have drafted this Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*. This Agreement is a collaborative effort of the Parties and their respective attorneys.

I. Costs

Except as otherwise provided herein, each Party shall bear its own legal and other costs incurred in connection with the Released Claims, including the preparation and performance of this Agreement.

J. Modification or Amendment

This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Agreement or their successors-in-interest.

K. No Waiver

The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

L. Severability

Should any part, term, or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder; provided, however, that the terms of this Section VII(L) shall not apply should any court or tribunal find any part, term, or provision of Section III or of the release, as set forth in Section VI, to be illegal or invalid in any manner.

M. No Violation of Law or Agreement

The execution, delivery, and performance of this Agreement by the Parties hereto does not and will not, conflict with, violate, result in a breach of, or cause a default under, (a) any applicable provision of any federal, state, or local law or regulation, (b) any provision of any order, arbitration award, judgment, or decree, or (c) any provision of any agreement or instrument applicable to the Parties.

N. Successors

This Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the Parties hereto.

O. Choice of Law

All terms and conditions of this Agreement shall be governed by and interpreted according to the laws of the state of Florida, without reference to its conflict of law provisions, except to the extent that federal law governs. The adequacy of the settlement, any determination regarding Class Counsel's fees and expenses, and any Incentive Payment shall be governed by federal law.

P. Fair and Reasonable

The Parties and their counsel believe that this Agreement is a fair and reasonable compromise of the disputed claims, it is in the best interests of the Parties, and have arrived at this Agreement as a result of extensive arms-length negotiations.

Q. Headings

All headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

R. Exhibits

The Exhibits to this Agreement are expressly incorporated and made part of the terms and conditions set forth herein.

S. Counterparts

This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

T. Facsimile and Electronic Mail

Transmission of a signed Agreement by facsimile or electronic mail shall constitute receipt of an original signed Agreement by mail.

U. Warranty of Signature

Each signer of this Agreement represents and warrants that he or she is authorized to execute this Agreement in his or her official capacity on behalf of the Party to this Agreement for which he or she is signing and that this Agreement is binding on the principal represented by that signatory.

V. No Assignment

Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title, or interest in or to any claims, causes of action, or demands which were or could have been, or ever could be asserted against any Party and that are released in this Agreement, or which were, could have been, or ever could be asserted against any Party.

W. Settlement To Proceed Regardless If The Court Or The Eleventh Circuit Determines That The Court Lacks Subject Matter Jurisdiction

Should the Court or the Eleventh Circuit determine that the Court lacks subject matter jurisdiction prior to the Settlement becoming Final, the Parties agree as follows:

1. The Parties shall proceed with this Settlement, without material change other than what may be necessary to accommodate a change to a state court jurisdiction and setting, in Cook County, Illinois, provided that Plaintiff files the latest amended complaint in substantially identical form except as to formatting and modifying to conform with state court Rules in the Circuit Court for Cook County Illinois;
2. Plaintiff shall file the same or materially the same motion for preliminary approval contemplated by Section III(G) of this Agreement except with updated case law, along with this Agreement;


3. The Parties agree to propose materially the same proposed Preliminary Approval Order, Final Approval Order, Class Notice, and Settlement Claim Form proposed here; the only material changes that shall be made, and only if deemed necessary, shall be to reflect the change of court, the passage of time, any need for a new state court presiding over the matter to make its own findings regarding the propriety of certifying the Settlement Class, and any other change in circumstances the Parties to this Settlement mutually agree is needed to secure the final approval of this Agreement;

4. Defendants hereby waives any statute of limitations defense it might have against Plaintiff or any Settlement Class Member created as a result of the need to refile the case in state court because a federal court determined that it lacked subject matter jurisdiction.

5. Should this settlement need to be refiled in and proceed in Cook County, Illinois, any additional costs of notice and administration (*i.e.*, to send out a secondary or additional notice) shall be borne solely and exclusive by Class Counsel and shall not come from the Settlement Amount. Further, Class Counsel shall not seek any additional fees, costs or other expenses as a result of having to refile in and proceed in Cook Count, Illinois.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves or by their duly authorized representatives:

Dated: 10/20/19 By:

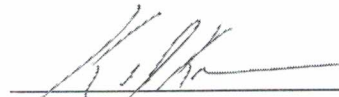


Brian Keim
Plaintiff and Class Representative

Execution Copy

Dated: 10/28/2019

By:



Scott D. Owens

Keith J. Keogh

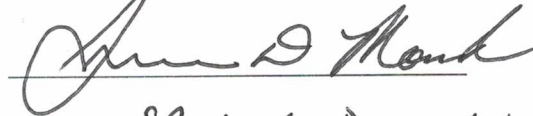
Amy L. Wells

Counsel for Plaintiff Keim and the Settlement Class

Dated: 10/28/19

By:

ADF MIDATLANTIC, LLC



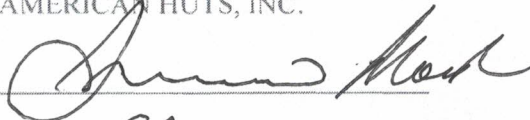
Name: SPENCER D. MANKO

Title: CFO

Execution Copy

Dated: 10/28/19

By: AMERICAN HUTS, INC.



Name: SPENCER D. MANKO

Title: CFO

Dated: 10/28/19

By: ADF PIZZA I, LLC



Name: SPENCER D. MANKO

Title: CFO

Dated: 10/28/19

By: ADF PA, LLC

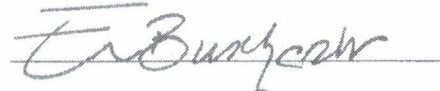


Name: SPENCER D. MANKO

Title: CFO

Dated: 10/28/19

By: PIZZA HUT, LLC



Name: ERIKA BURKHARDT

Title: V.P. Brand Protection

Dated: _____

By: _____

David S. Almeida
Mark Eisen
Jordon S. Kosches
Counsel for Defendants

Execution Copy

Dated: _____

By: AMERICAN HUTS, INC.

Name: _____

Title: _____

Dated: _____

By: ADF PIZZA I, LLC

Name: _____

Title: _____

Dated: _____

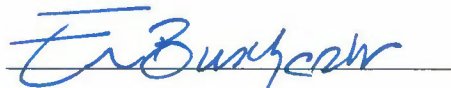
By: ADF PA, LLC

Name: _____

Title: _____

Dated: 10/28/19

By: PIZZA HUT, LLC



Name: ERIKA BURKHARDT

Title: V.P. Brand Protection

Dated: 10/29/19

By: 

David S. Almeida

Mark Eisen

Jordon S. Kosches

Counsel for Defendants