

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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MATTHEW GALANTOWICZ, on behalf of himself :
and all others similarly situated, :

Plaintiff, :

-against- :

RHINO ROOM INC. d/b/a BUFFALO
CHOPHOUSE, and MARC CROCE, :

Defendants. :
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12 Civ. 0971 (WMS) (JJM)

STIPULATION FOR
BINDING AWARD
BY MEDIATOR
ROBERT WEISSFLACH

WHEREAS, Robert Weissflach, Esq. ("Weissflach") has been appointed by the Court to mediate the dispute; and

WHEREAS, a bona fide dispute exists between the parties as to the merits of the claims, and parties anticipate and wish to avoid potential extensive additional discovery and motion practice should the parties fail to reach a settlement in this matter; and

WHEREAS, the parties authorize Weissflach to make a binding Award based on submissions at the December 10, 2013 mediation and additional submissions as set forth below or as further directed by Weissflach;

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES HERETO, that:

1. Weissflach will make all decisions regarding resolution of all issues in the case (the "Award") and his ruling will be binding and final on all parties on all issues in the case.

2. The Award will include a Resolution Amount having high/low limitation, including attorneys' fees and costs. The high will be \$480,000 and the low will be \$51,000, all-inclusive. The high/low numbers are based on the last offer and demand made at the mediation session on December 10, 2013 (factoring in the withdrawals of

Alex Huerta, Casey Pauline, and William Tardi). This amount shall in addition be adjusted pro rata based on proposed damages for the withdrawal or dismissal of any plaintiffs who have not submitted a verified response to interrogatories in the lawsuit within 30 days of the date of this Stipulation.

3. In the event that any plaintiff, with the exception of deceased plaintiffs James Finan and David Weaver, does not provide the required verified response to interrogatories, the parties agree to make a joint application to the Court to dismiss such plaintiff(s) from the case. As to the deceased Plaintiffs Defendant shall serve a Suggestion of Death pursuant to FRCP 25 and Plaintiffs shall respond as they deem appropriate. The mediation will only proceed when all plaintiffs in this litigation have provided verified interrogatories from the Plaintiffs or their duly appointed and substituted representatives and any remaining plaintiffs' claims have been dismissed by the Court.

4. Once the pool of continuing Plaintiffs has been finally resolved the mediation process shall proceed as follows:

- a. Both parties will submit a Mediation Memorandum and exhibit book digitally to Weissflach on or before a certain date.
- b. Weissflach, once in receipt of both parties' Memorandums and exhibit books will forward them to the other party.
- c. Within two weeks of the date the parties receive the forwarded Mediation Memorandum and exhibit book, the parties will submit any response to the others' Mediation Memorandum in digital form, including exhibits if desired.
- d. Upon Weissflach's receipt of both parties' Responses, he will transmit the Responses to the opposing parties.

- e. Each party will have one week following receipt of the Response to submit a Reply. The Reply will contain only argument and no additional exhibits.

5. As all plaintiffs in the case are current or former employees of Buffalo Chophouse, the Award will include mutual general releases of any and all claims including but not limited to those plead in the instant action.

6. The Award for named plaintiff Matthew Galantowicz shall include any "service fee" and/or other amount Weissflach deems appropriate.

7. In the event that Matthew Galantowicz wishes to make a claim for wrongful termination or any violation of law related to his separation from employment with Defendants he will specifically make the argument and provide evidence in accordance with the Mediation submittal referenced in 4.a. above. In the event that such claim is so made Defendants shall respond as provided in 4.c above. Plaintiffs may reply to Defendants Response as set forth in 4. e. If Plaintiffs submit a Reply the Defendants may submit a Sur-Reply only on the issues of the termination within 1 week after receiving Plaintiffs Reply.

8. Weissflach's fees in rendering his Award will be paid equally by both sides regardless of outcome.

9. All plaintiffs and defendants will sign a confidentiality agreement as to the terms of settlement and as to Weissflach's Award. Weissflach's Award will contain a confidentiality provision as to the Resolution Amount and shall establish liquidated damages or not as Weissflach may deem appropriate. There will be no publicity of the settlement by counsel, who will also be bound by the terms of the settlement and confidentiality agreements.

10. This Stipulation shall be "so ordered" by the Court, and the Court shall retain jurisdiction over this matter.

11. The Award of Weissflach will be submitted to the Court for "approval" upon the recommendation and request of all parties. The Award will only become effective if approved by the Court.

12. As the case involves sharply disputed factual and legal issues, the Award of Weissflach shall be distributed on a pro-rata basis based on weeks worked and the parties agree that this is a fair and reasonable method of distribution in light of all of the circumstances.

13. The Parties agree that Defendants continue to deny any obligation to pay back wages or damages and Defendants' willingness to participate in this binding mediation is based in part on the desire to avoid additional litigation costs.

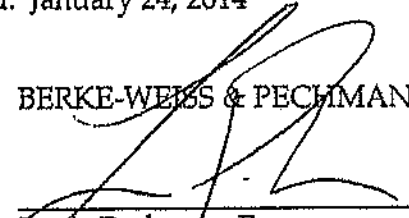
14. Defendants shall issue a W-2 or 1099 or other required form as may be appropriate to each plaintiff and to Plaintiffs' Counsel.

15. The parties agree that as Weissflach is an experienced practitioner in the area of wage and hour law, there is no need for a written Opinion on the legal and factual issues in this case, and that Weissflach's Award shall be limited to the Resolution Amount and other terms of resolution that Weissflach deems appropriate, including confidentiality.

16. Weissflach may have any *ex parte* contact that he deems appropriate to determine and effectuate his Award. Each party shall have the right to contact Weissflach on an *ex parte* basis, provided however that all evidence and argument to be considered by Weissflach shall be limited to that provided as specified in 4 above.

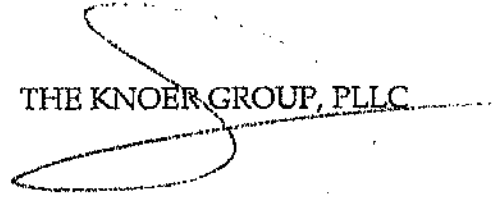
Dated: January 24, 2014

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