

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement And Release Of Claims (“Agreement”) is entered into by and between Nicolet Arcieri, her heirs, estate, executors, administrators, personal representatives, successors, and/or assigns (collectively, “Plaintiff”) and Shadow Management Company, Inc., d/b/a Platinum Plus (Columbia); Splash, Inc., d/b/a Platinum Plus (Columbia); Elephant, Inc., d/b/a Platinum Plus (Greenville); KWE Group, LLC; and Gregory Kenwood Gaines, a/k/a Ken Woods, along with any affiliated and related entities (collectively referred to as the “Defendants”) (Plaintiff and Defendants are collectively referred to herein as the “Parties”) and is based on the following recitals:

On August 1, 2014, Plaintiff filed an action against Defendants which is currently pending in the United States District Court for the District of South Carolina, styled, *Nicolet Arcieri v. Shadow Management Company, Inc., d/b/a Platinum Plus (Columbia); Splash, Inc., d/b/a Platinum Plus (Columbia); Elephant, Inc., d/b/a Platinum Plus (Greenville); KWE Group, LLC; and Gregory Kenwood Gaines a/k/a Ken Woods*, Civil Action No. 3:14-3029-JFA, in which Plaintiff seeks relief for alleged violations of the Fair Labor Standards Act of 1938, (“FLSA”), 29 U.S.C. §§ 201, *et seq.* (the “Action”);

Defendants deny any and all alleged violations of law and any and all liability for the claims alleged in the Action;

Defendants deny that it is or was Plaintiff’s employer and/or joint employer under the FLSA or any other federal or state statute, rule of law, regulation, or for any other purpose whatsoever;

This Agreement was negotiated with the understanding that this settlement does not constitute an admission or an adjudication of wrongdoing or liability;

The Parties are represented by experienced counsel and have entered into this Agreement upon the advice of counsel after being fully informed of their legal rights;

This Agreement was negotiated between persons representing substantial adverse interests, who were fully informed concerning the legal rights, issues, and evidence involved in the Action and who negotiated in good faith and at arm’s length;

Bona fide disputes and controversies exist between the Parties, both as to liability and the amount thereof, if any, and by reason of such disputes and controversies, Plaintiff and Defendants desire to compromise and settle fully and finally, by the execution of the Agreement, all claims and causes of action arising under the FLSA; and

The Parties stipulate that the settlement is reasonable due to the uncertainty of Plaintiff’s claims, which Defendants vigorously dispute;

In consideration of the promises and mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree:

1. **Consideration.** In consideration for signing this Agreement, including the promises herein, and for the compliance with the promises made herein by the undersigned, Plaintiff agrees to accept the gross amount of thirty thousand one hundred fifty-three and no cents (\$30,153.00) to be apportioned as follows:

- a. \$10,000 to Nicolet Arcieri to resolve all claims under state or federal law for alleged unpaid wages, as well as any claims for liquidated damages or interest.
- b. \$20,153 in attorneys' fees and litigation expenses/costs shall be paid to Plaintiff's counsel as follows: \$10,903.40 to Jennifer Munter Stark, Esq. and \$9,249.60 to Martin & Martin, LLP.

Separate IRS 1099 Forms shall be issued to Plaintiff's counsel and Plaintiff. Plaintiff acknowledges and agrees that she is solely responsible for any and all federal, state, and local taxes that may be due from the settlement sum, whether it is determined that any taxes are owed based on the taxation laws in effect on the date of execution of this Agreement or that may become due at any time in the future because of a change to the laws governing the taxation of such settlement proceeds. Plaintiff expressly acknowledges and agrees that for purposes of this Agreement, she and has been properly classified as an independent contractor for whom the issuance of a Form 1099 is legally appropriate. Plaintiff further expressly acknowledges and agrees that she is relying upon her own legal and/or tax advisors, and not upon Defendants or their attorneys, with respect to any tax aspects of this Agreement. Plaintiff further acknowledges and agrees to indemnify and hold Defendants harmless in the event that any federal, state, or local taxing authority asserts any claim for liability, including, but not limited to, unpaid taxes, failure to withhold taxes, penalties, interest, or other sums that may become due to any taxing authority based upon the terms of this Agreement. Defendants agree to make the settlement payment within fourteen (14) days of the Court approval of the settlement, as more fully described below.

2. **No Consideration Absent Execution of this Agreement.** Plaintiff understands and agrees that she would not receive the monies and/or benefits specified in paragraph "1" above, except for her execution of this Agreement and the fulfillment of the promises contained herein.

3. **Release of Claims.** Plaintiff knowingly and voluntarily releases and forever discharges (i) Defendants, (ii) any current or former subsidiary, parent company, affiliated entity, related entity, successor, assign, or division of Defendants, and (iii) any current or former officer, director, trustee, agent, employee, shareholder, representative, advisor, insurer, attorney, or employee benefit or welfare program or plan (including the administrators, trustee, fiduciaries, and insurers of such program or plan) of an entity referenced in or encompassed by subsection (i) or (ii) hereof, from any and all claims, debts, penalties, liabilities, demands,

obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action of whatever kind or nature, whether known or unknown, that were alleged or that reasonably arise out of the same transactions or occurrences alleged in *Nicolet Arcieri v. Shadow Management Company, Inc., d/b/a Platinum Plus (Columbia)*; *Splash, Inc., d/b/a Platinum Plus (Columbia)*; *Elephant, Inc., d/b/a Platinum Plus (Greenville)*; *KWE Group, LLC*; and *Gregory Kenwood Gaines a/k/a Ken Woods*, Civil Action No. 3:14-3029-JFA, or any any other person or entity affiliated or related to any Defendants. This means that all claims for allegedly uncompensated wages, and including associated liquidated damages, interest, and penalty claims that were asserted or could have been asserted in this lawsuit under federal or state law against any Defendants are hereby fully and completely released and discharged . This release includes all FLSA or other federal or state wage claims. This release includes any claims which are derivative of the claims being released. The enforceability of this Agreement is not contingent on the amount of attorneys' fees or expenses approved by the Court.

If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative or to otherwise participate in any putative or certified class, collective or multi-party action or proceeding based on such a claim in which one or more Defendants or any other Releasee identified in this Agreement is a party.

4. **Dismissal of Action.** Upon complete execution of this Agreement, or within three (3) business days thereof, the Parties agree that a Joint Motion for Court Approval of Settlement will be filed with the Court, attached hereto as Exhibit A. It is agreed that this Agreement will not be filed via Electronic Court Filing ("ECF") or otherwise unless required by the Court. If submission is required, the Parties will seek to submit it to the Court for *in camera* review for purposes of obtaining judicial approval of same should the Court so require. Should the Court not approve the settlement, the Parties agree that they will have forfeited no rights and will revert to the status of the Action as it existed on June 1, 2015. Upon approval of this settlement, this action shall be dismissed with prejudice.

5. **Acknowledgments and Affirmations.** Plaintiff affirms that she has reported all hours worked as of the date of this Agreement and has been paid and/or have received from Defendants all compensation, wages, bonuses, and/or commissions to which she may be entitled, and that no other compensation, wages, bonuses, and/or commissions are due to her, except as provided in this Agreement.

Plaintiff has not filed, caused to be filed, or is presently a party to any claim against Defendants or any of the Releasees with any local, state, or federal agency or court, except for the Action referenced above;

Plaintiff has not suffered and/or sustained any work-related accidents, injuries, and/or occupational diseases while affiliated with Defendants for which issues of liability have not already been fully resolved;

Plaintiff agrees that if she desires to perform at any of Defendants' business locations, she shall execute an Entertainer Lease Agreement, a copy of which has been provided to Plaintiff and her counsel of record;

Both Plaintiff and Defendants acknowledge that this Agreement does not limit either party's right, where applicable, to file or to participate in an investigative proceeding of any federal, state, or local governmental agency. To the extent permitted by law, Plaintiff agrees that if such an administrative claim is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies; and

A failure of the Court to approve any material condition of the FLSA Settlement Agreement which effects a fundamental change of the Parties' settlement shall render the entire settlement voidable and unenforceable as to all Parties herein at the option of the party adversely affected thereby. However, neither party may void the settlement based on the Court's approval or non-approval of any request for attorneys' fees or based on the amount of any attorneys' fees.

6. **Confidentiality.** The Parties acknowledge that settlement of claims brought pursuant to the FLSA requires approval by the Court. Unless otherwise required by the Court to be filed of record, this Agreement will not be filed as part of the Court's record. In the event that the Court does require that this Agreement be part of the record for the Action, the Parties agree that no one affirmatively shall otherwise seek or make public disclosure of this Agreement or its content. The Parties and their respective attorneys and representatives agree to keep confidential and to not disclose information concerning the terms of this Agreement and the sums paid as consideration, any claims made or which Plaintiff believes may exist, to any person, persons or organization including, but not limited to, a statement, written or oral, to any person, newspaper, magazine, radio or television station, present or former employees or independent contractors of Defendants, any Internet site, blog or other posting except as required by law, by Releasees' business operations or as specified herein. The restrictions on public disclosure shall apply even if the underlying settlement agreement is required to be filed as part of the public record.

Nothing contained herein shall be construed to prevent the disclosure of the amount and terms of settlement to the Parties' accountants, auditors, financial advisors, spouse, attorneys, tax authorities, or to any regulatory agency or court when required by law or court order to do so. Any person or entity provided a copy hereof or information hereabout by Plaintiff shall be instructed not to make any disclosure hereof.

This Agreement shall be submitted to the Court for review *in camera* for purposes of supervision pursuant to the FLSA and otherwise shall remain forever confidential except in an action to enforce or for breach of this Agreement. Plaintiff agree to join in Releasees' application to the court for this confidential *in camera* review.

7. **Effective Date.** The settlement shall become effective on the settlement "Effective Date," which is defined as the date that the Court grants the Parties' Motion to Approve Settlement.

8. **Governing Law and Interpretation.** This Agreement shall be governed and conformed in accordance with the laws of the state of South Carolina without regard to its conflict of laws provision. In the event of a breach of any provision of this Agreement, either party may institute an action specifically to enforce any term or terms of this Agreement and/or

seek any damages for breach. Should any provision of this Agreement be declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

9. **Nonadmission of Wrongdoing.** Nothing contained herein is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of any Defendants. Nothing in this settlement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility or fault whatsoever by any Defendants or their employees and agents, who expressly deny any liability, wrongdoing, impropriety, responsibility, or fault whatsoever.

10. **Amendment.** This Agreement may not be modified, altered or changed, except in writing, and signed by all Parties wherein specific reference is made to this Agreement.

PLAINTIFF HAS READ AND FULLY CONSIDERED THIS AGREEMENT AND THE RELEASE LANGUAGE HEREIN AND DESIRES TO ENTER INTO THIS AGREEMENT. PLAINTIFF HAS BEEN ADVISED IN WRITING TO CONSULT WITH AN ATTORNEY PRIOR TO HER EXECUTION OF THIS AGREEMENT AND RELEASE.

PLAINTIFF FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTERS INTO THIS AGREEMENT AND RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS SHE BROUGHT IN THE ACTION OR COULD HAVE BROUGHT IN THE ACTION AGAINST DEFENDANTS.

The Parties knowingly and voluntarily sign this Agreement as of the date(s) set forth below and on the signature pages that follow:

Nicolet Arcieri
Nicolet Arcieri

Date: June 24, 2015

Shadow Management Company, Inc.,
d/b/a Platinum Plus (Columbia)

By: [Signature]

Its: MES

Date: ~~7-6-15~~ 7-6-15 [Signature]

Jennifer Munter Stark
Jennifer Munter Stark
Attorney of Record

Date: 6-29-2015

Splash, Inc., d/b/a Platinum Plus
(Columbia)



Kimberly N. Martin

Kimberly Martin
Attorney of Record

Date: 6/26/15

By: [Signature]

Its: RES

Date: 7-6-15

**Elephant, Inc., d/b/a Platinum Plus
(Greenville)**

By: [Signature]

Its: RES

Date: 7-6-15

**KWE Group, LLC; KWON, LLC, d/b/a
Platinum West**

By: [Signature]

Its: RES

Date: 7-6-15

Gregory Kenwood Gaines

By: [Signature]

Date: 7-6-15