

SETTLEMENT AGREEMENT AND RELEASE

This Class Action Settlement Agreement and Release (the “Settlement Agreement” or “Agreement” or “Settlement”) is made and entered into by and between Red Robin Gourmet Burgers, Inc. and Red Robin International, Inc. (collectively “Red Robin” or “Defendants”), on the one hand, and Christopher Bruun (“Named Plaintiff”) on behalf of himself individually, and on behalf of the class described below (hereinafter collectively the “Settlement Class”), on the other. This Settlement Agreement sets forth all of the rights, duties, and obligations of Named Plaintiff on behalf of himself and the Settlement Class and Red Robin (hereinafter collectively the “Parties”), including the Recitals below, and all provisions of this Settlement Agreement.

This Settlement Agreement is made as of May 31, 2022, and shall become effective on the Final Settlement Date, as set forth below. This Settlement Agreement is for settlement purposes only and is conditioned upon the full and final settlement of all claims against Red Robin as more fully set forth below.

RECITALS

This Settlement Agreement is made for the following purpose and with reference to the following:

A. On April 27, 2020, Named Plaintiff filed a complaint against Defendants entitled *Bruun v. Red Robin Gourmet Burgers, Inc. et. al.* Case No. A-20-814178-C in the District Court for Clark County Nevada (the “Action”). Named Plaintiff brought the Action individually and on behalf of a putative class of Red Robin customers in the United States. Named Plaintiff asserts claims for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, Violation of the various state Consumer Fraud and Deceptive Trade Acts, and Unjust Enrichment, all allegedly arising out of Red Robin “overcharging” Named Plaintiff and Settlement Class Members for certain glasses of Stella Artois beer.

B. Red Robin disputes the claims made in the Action both as to facts and law, denies that it breached any contract or violated any statute, and denies any liability to Named Plaintiff or any member of the proposed Settlement Class, as defined further in this Settlement Agreement. By entering into this Settlement Agreement, Red Robin does not admit any liability or wrongdoing of any kind or that any class can or should be certified, except for settlement purposes.

C. Settlement Class Counsel (as defined below) and Named Plaintiff believe that the Action has merit and have examined and considered the benefits to be obtained under this Settlement Agreement, the risks associated with the continued prosecution of the complex and potentially time-consuming litigation, and the likelihood of maintaining class certification and success on the merits. Settlement Class Counsel has fully investigated the facts and law relevant to the Action. Settlement Class Counsel has obtained documents and extensive information from Defendants and has conducted an extensive and thorough examination, investigation and evaluation of the relevant law, facts and allegations to assess the merits of the claims, potential claims, and potential defenses. Settlement Class Counsel and Named Plaintiff have concluded that the settlement set forth in this Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

D. The Parties enter into this Settlement Agreement to avoid the further expense in time and resources of protracted litigation and to avoid the risks inherent in litigation. This Agreement is the product of extensive, arm's-length, and vigorously contested motion practice through seasoned counsel, settlement negotiations, and an exchange of information. The Parties desire to settle the Action in its entirety with respect to all claims alleged in the class complaint, or that could have been alleged in the class action complaint, and/or arising from or related to Settlement Class Members' purchases of Stella Artois beer from Red Robin during the Settlement Class Period (as defined below). The Parties intend for this Settlement Agreement to bind the Parties and all Settlement Class Members who do not opt out of the Settlement Class (as defined below).

E. The Action has not been certified as a class action. Subject to the approval of the Court, the Parties agree that a class may be conditionally certified for purposes of this Settlement. Defendants agree to class-action treatment of the claims alleged in this Action solely for the purpose of compromising and settling those claims on a class basis as set forth herein.

F. Named Plaintiff, as the proposed Settlement Class Representative, believes the claims settled herein have merit. Named Plaintiff and his counsel recognize, however, the litigation risk involved, including the expense and length of continued proceedings necessary to prosecute the claims through trial and appeal, and have taken account those factors, as well as the litigation's inherent difficulties and delays. They believe the settlement set forth in this Agreement confers substantial benefits upon the Settlement Class Members. They have evaluated the settlement set forth in this Agreement and have determined that it is fair, reasonable, and adequate to resolve their grievances, and in the best interest of the Settlement Class.

G. Defendants have denied, and continue to deny, that Red Robin's marketing, advertising, or sales of Stella Artois is false, deceptive or misleading to consumers or violates any contract or legal requirement. Defendants' willingness to resolve the Action as set forth in this Agreement is based on a number of factors, including: (i) the time and expense associated with litigating this Action through trial and any appeals; (ii) the benefits of resolving the Action, including limiting further expense, inconvenience, and distraction, disposing of burdensome litigation, and permitting Defendants to conduct their business unhampered by the distractions of continued litigation; and (iii) the uncertainty and risk inherent in any litigation, regardless of legal merit.

NOW, THEREFORE, in light of the foregoing, in consideration of the terms and conditions set forth herein, which the Parties acknowledge are good and valuable consideration for this Settlement Agreement, the Parties hereby agree and stipulate, by and through their respective counsel, subject to approval by the Court, as follows:

AGREEMENT

1. DEFINITIONS.

The following section defines terms not previously defined above. Some definitions use terms that are defined later in this section.

- 1.1 The term “**Claim Form**” shall mean a fully completed, signed attestation on a form that is materially identical to the form attached as Exhibit C.
- 1.2 The term “**Claim Period**” means the time period during which Settlement Class Members may submit a Claim Form to the Settlement Administrator for review. The Claim Period shall start on the date that Notice is first disseminated, and end forty-five (45) calendar days after the date Final Approval of the Settlement is granted by the Court.
- 1.3 The term “**Court**” means the District Court for Clark County, Nevada.
- 1.4 The term “**Detailed Notice**” means the legal notice of the proposed settlement terms, as approved by Settlement Class Counsel, Defendants’ Counsel, and the Court, to be posted to the Settlement Website pursuant to Section 3.2(b). The Detailed Notice submitted to the Court for preliminary approval must be materially identical to the form attached as Exhibit B.
- 1.5 The term “**Fairness Hearing**” means the hearing at which the Court decides whether to approve this Settlement Agreement as a fair, reasonable, and adequate settlement and enter the Final Approval Order.
- 1.6 The term “**Final Order and Approval**” or “**Final Approval Order**” means an order approving the settlement of this Action as set forth in this Settlement Agreement. As described in more detail below, Named Plaintiff, through Settlement Class Counsel, shall submit a motion for final approval of the Settlement Agreement at the Fairness Hearing and shall include a proposed Final Order and Approval that is materially identical to the form attached as Exhibit E.
- 1.7 The term “**Final Settlement Date**” shall mean the earliest of the following: (1) thirty-five (35) calendar days after the entry of the Final Order and Approval if objections are filed and overruled, notice of entry of the order has been served, and no appeal is taken from the Final Order and Approval; or (2) if a timely appeal or motion for reconsideration is filed, thirty-five (35) calendar days after the date of the final resolution of that appeal or motion and any subsequent appeals or petitions for review or certiorari from the Final Order and Approval, provided such appeals or reviews affirm the Final Order and Approval.
- 1.8 The “**Net Settlement Amount**” is the gross Settlement Amount of \$450,000, less any Court-approved service award to Named Plaintiff; any Court-approved Settlement Class Counsel’s attorneys’ fees and costs as provided by this Agreement; and all costs of notice and administration of the Settlement.
- 1.9 The term “**Notice Program**” means the plan for publication of Class Notice developed by the Settlement Administrator.
- 1.10 The term “**Preliminary Approval Order**” means a proposed order preliminarily approving the settlement of this Action. This order proposed to the Court must be materially identical to the form attached as Exhibit D.

- 1.11** The terms “**Red Robin’s Counsel**” and “**Defendants’ Counsel**” mean the law firm of Polsinelli PC.
- 1.12** The term “**Settlement Administrator**” means Angeion Group and any successors to that entity that Settlement Class Counsel may subsequently designate, with notice to and consent from Red Robin, through Defendants’ Counsel (whose consent will not be unreasonably delayed or withheld), to administer the claims process provided for in the Settlement Agreement.
- 1.13** The term “**Settlement Class**” shall mean all natural persons who, between June 25, 2017 and the date of preliminary approval, purchased from a Red Robin Gourmet Burger and Brews restaurant a “small” size Stella Artois beer which was served in a Stella Artois chalice. Excluded from the Settlement Class are (a) Defendants’ current and former employees, officers, and directors; (b) all agents of Red Robin; (c) legal counsel for Named Plaintiff or Red Robin and members of their immediate families; (d) all judges assigned to hear any aspect of this litigation as well as their immediate family members; and (e) legal representatives, successors and assigns of any such excluded person.
- 1.14** The term “**Settlement Class Counsel**” means Thomas A. Zimmerman, Jr. of Zimmerman Law Offices, P.C., and Dennis L. Kennedy of Bailey❖Kennedy.
- 1.15** The term “**Settlement Class Member**” refers to each individual in the Settlement Class.
- 1.16** The term “**Settlement Class Period**” means the time period from June 25, 2017 to the date of preliminary approval.
- 1.17** The term “**Settlement Class Representative**” shall mean Named Plaintiff.
- 1.18** The term “**Settlement Website**” means a website set up by the Settlement Administrator for the purpose of providing the Settlement Class with notice of the proposed settlement.
- 1.19** The term “**Summary Notice**” means the legal notice of the proposed settlement terms, as approved by Settlement Class Counsel, Defendants’ Counsel, and the Court, to be posted by Defendants in a conspicuous location on Defendants’ company website with a link to the Settlement Website, disseminated over the Internet, and in various media, as determined by the Settlement Administrator. The Summary Notice submitted to the Court for approval must be materially identical to the form attached as Exhibit A.

2. SETTLEMENT PAYMENTS AND PROCEDURES.

- 2.1 Settlement Amount.** In consideration of the releases described in Section 4.2, Red Robin agrees to pay a total of \$450,000 (the “Settlement Amount”) by paying the Settlement Amount into an Escrow Account (the “Settlement Fund”). The Settlement Amount described in this Section 2.1 shall be the maximum possible

amount of any payment obligation by Red Robin, and Red Robin shall have no further obligation to make any other payments or provide any other benefits whatsoever. Red Robin's payment of the Settlement Amount, and any other non-monetary obligations of and consideration due from Red Robin under this Agreement, will be in full satisfaction of all individual and class claims that were asserted in or that could have been asserted in this Action. Except as provided in this Settlement Agreement, all payments to be made to members of the Settlement Class, including a service award for the Settlement Class Representative, attorneys' fees, and costs to Settlement Class Counsel, and costs of notice and administration of the Settlement shall be paid out of the Settlement Fund.

2.2 Relief Provided to the Settlement Class. The Net Settlement Amount (the \$450,000 Settlement Amount less any award of attorneys' fees and costs, any service award to the Settlement Class Representative, and all costs of notice and administration paid to the Settlement Administrator) will be divided among Settlement Class Members as follows: (1) any Settlement Class Member who does not have documentation of a purchase will be eligible for a pro rata payment from the Settlement Fund of up to \$3.00 per beer for up to 5 beers, provided that Settlement Class Member submits a timely and valid Claim Form; (2) any Settlement Class Member who provides documentary proof of purchase from a Red Robin restaurant (such as a cash register receipt or a credit card statement showing a purchase of Stella Artois from a Red Robin restaurant, or similar proof) along with a timely and valid Claim Form will be eligible for a payment from the Net Settlement Amount of up to \$3.00 per documented purchase of an eligible Stella Artois beer. Acceptable forms of documentation include, but are not limited to, documentation showing a purchase of a Stella Artois beer. All Claim Forms will be evaluated by the Settlement Administrator for validity and timeliness.

(a) **Inadequate Documentation of Six or More Beers.** If a Settlement Class Member claims six (6) or more beers, but fails to provide adequate documentation or other evidence to support the claim for the purchase of six (6) or more beers, the Settlement Class Member will be eligible for a payment for only those purchases of six (6) or more beers for which there is adequate documentation. However, if the Settlement Class Member claims six (6) or more beers, but fails to provide adequate documentation or other evidence to support the claim for the purchase of more than five (5) beers, then the Settlement Class Member will be treated as if he/she claimed five (5) beers with no proof of purchase and he/she will be eligible for a payment for five (5) beers.

(b) **Adjustment of Claim Amounts, and Unclaimed Money.** If the amount of money in the Net Settlement Amount is less than the total value of timely and valid claims, then each claimant's monetary relief would be reduced *pro rata*, so that the total value of claims equals the amount of money in the Net Settlement Amount. However, if the amount of money in the Net Settlement Amount is greater than the total value of timely and valid claims, then the remaining money would revert back to Defendants.

2.3 Pursuant to the procedures set forth in this Section 2 and Section 3, below, the Settlement Administrator will make a payment to each Settlement Class Member who submits a valid and timely Claim Form and does not opt out pursuant to Section 3.5. By accepting the role of Settlement Administrator, the Settlement Administrator agrees to be bound by the terms of this Settlement Agreement and the jurisdiction and Orders issued by the Court in this Action.

2.4 Eligibility and Process for Obtaining Cash Payment.

- (a) **Claim Form Availability.** The Claim Form shall be in a substantially similar form to that attached as Exhibit C. The Claim Form will be: (i) included on the Settlement Website; and (ii) made readily available from the Settlement Administrator, including by requesting a Claim Form by mail, e-mail, or by calling a toll-free number provided by the Settlement Administrator. A Claim Form can also be completed electronically on the Settlement Website, and the Settlement Website will allow claimants to upload supporting documentation to support their claim.
- (b) **Timely Claim Forms.** To receive payment pursuant to Section 2.2, Settlement Class Members must submit a timely Claim Form, which is one postmarked or submitted on-line before or on the last day of the Claim Period, the specific date of which will be prominently displayed on the Claim Form, Class Notice, and Settlement Website.
- (c) **Validity of Claim Forms.** To receive payment pursuant to Section 2.2, Settlement Class Members must submit a valid Claim Form. To be “valid”, the Claim Form must contain the Settlement Class Member’s name and mailing address, and a statement of the number of Stella Artois beers purchased by the claimant during the Settlement Class Period, and if applicable, the required documentation to claim six (6) or more beer purchases. Claim Forms that do not meet the requirements set forth in this Agreement and in the Claim Form instructions may be rejected, subject to the adjustments set forth in Section 2.2(a). Where a good faith basis exists, the Settlement Administrator may reject a Settlement Class Member’s Claim Form for, among other reasons, the following:
1. Failure to attest to the purchase of a small size Stella Artois beer that was served in a Stella Artois chalice;
 2. Failure to provide adequate verification or additional information of the Claim pursuant to a request by the Settlement Administrator;
 3. Failure to fully complete and/or sign the Claim Form;
 4. Failure to submit a legible Claim Form;
 5. Submission of a Claim Form that is duplicative of another Claim Form submitted by that Settlement Class Member;

6. Submission of a Claim Form by a person who is not a Settlement Class Member;
7. Request by a person submitting a Claim Form to pay funds to a person or entity that is not the Settlement Class Member for whom the Claim Form is submitted;
8. Failure to submit a Claim Form by the end of the Claim Period; or
9. Failure to otherwise meet the requirements of this Agreement

- (d) **Claim Form Submission and Review.** Claimants may submit a Claim Form either by mail or electronically. The Settlement Administrator shall review and process the Claim Forms pursuant to the process described in this Agreement to determine each Claim Form's validity. Adequate and customary procedures and standards will be used by the Settlement Administrator to prevent the payment of fraudulent claims and to pay only legitimate claims. The Parties shall take all reasonable steps and direct the Settlement Administrator to take all reasonable steps, to ensure that Claim Forms which are completed and signed electronically by Settlement Class Members conform to the requirements of the federal Electronic Signatures Act, 15 U.S.C § 7001, et. seq. Settlement Class Counsel and Defendants' Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.
- (e) **Claim Form Deficiencies.** Failure to provide all information requested on the Claim Form will not result in immediate denial or nonpayment of a claim. Instead, the Settlement Administrator will take all adequate and customary steps to attempt to cure the defect and to determine the Settlement Class Member's eligibility for payment and the amount of payment based on the information contained in the Claim Form, including an attempt to follow-up with the claimant to gather additional information if necessary. If the Claim Form defect cannot be cured, the claim will be rejected. Defendants are entitled to dispute claims if they provide notice of dispute to Settlement Class Counsel, and if available records or other information indicated that the information on the Claim Form is inaccurate or incomplete, but determination of the validity of such disputed claim by the Settlement Administrator will be final.
- (f) **Failure to Submit Claim Form.** Unless a Settlement Class Member opts out pursuant to Section 3.5, any Settlement Class Member who fails to submit a timely and valid Claim Form shall be forever barred from receiving any payment pursuant to this Agreement and shall in all other respects be bound by all of the terms of this Agreement and terms of the Final Approval Order to be entered in the Action. Based on the Release contained in Section 4.2 of this Agreement, any Settlement Class Member who does not opt out

will be barred from bringing any action in any forum (state or federal) against any of the Released Parties concerning any of the matters subject to the Release.

- (g) **Manner of Transmission of the Payment.** The Settlement Administrator shall mail a check to the mailing address provided by each Settlement Class Member who submits a complete Claim Form according to the terms of this Agreement and any applicable Court order.
- (h) **Timing of Transmission of the Payment.** The Settlement Administrator shall mail checks to the Settlement Class Members at its earliest possible convenience, and in no event later than thirty (30) calendar days after the end of the Claim Period.
- (i) **Time to Cash Checks.** A Settlement Class Member shall have four (4) months from the date the Settlement Administrator first mails a check to that Settlement Class Member within which to cash such check.
- (j) **Returned or Undelivered Checks.** If a mailed check is returned or otherwise not delivered, the Settlement Administrator shall send one notice and request to cure by e-mail to the e-mail address contained on the Claim Form, if such email address has been provided, and the Settlement Administrator shall also attempt to call the claimant on the telephone number contained on the Claim Form, if such telephone number has been provided. The notices and requests for cure must be sent at the earliest possible convenience, and in no event later than seven (7) calendar days after the Settlement Administrator's receipt of a returned or otherwise undelivered check. The Settlement Class Member shall then have fourteen (14) calendar days from the date the notice referenced in this Section 2.4(j) is provided, to contact the Settlement Administrator with updated address information.
- (k) **Excess Funds.** If after proper notice, the Settlement Administrator is not able to pay a Settlement Class Member his or her share of the pro rata payment from the Net Settlement Amount, the amount of that payment shall be retained in the Net Settlement Amount. Any funds remaining in the Net Settlement Amount thirty (30) calendar days after the settlement checks are void will be returned by the Settlement Administrator to Red Robin.
- (l) **Claims Information.** No later than ten (10) calendar days before the filing deadline for the motion in support of the Final Order and Approval, the Settlement Administrator must serve a declaration(s) on Settlement Class Counsel and Red Robin's Counsel stating the number of timely and valid Claim Forms received and the amount of settlement relief claimed to date.

- 2.5 Settlement Implementation Costs.** The costs of notice and administration of this Settlement Agreement, including the cost of creating, printing, and publishing notice to Settlement Class Members shall be paid from the Settlement Fund.
- 2.6 Settlement Amount to be Transmitted to Settlement Administrator.**
- (a) Within seven (7) calendar days after the Court enters a Preliminary Approval Order, Defendants shall advance to the Settlement Administrator \$50,000 for the costs of settlement administration and Class Notice. This amount shall be deducted from the Settlement Amount. Any costs of settlement administration and Class Notice that exceed \$50,000 shall be deducted from the Settlement Amount prior to distribution to Settlement Class Members. If costs of settlement administration and Class Notice are less than \$50,000, then the difference will be added to the Net Settlement Amount for distribution to the Settlement Class Members.
 - (b) Within seven (7) business days after the Final Settlement Date, Red Robin shall send the \$400,000 remainder of the Settlement Amount to the Settlement Administrator to be held in the Settlement Fund for distribution pursuant to the terms of this Agreement and the Final Order and Approval. All funds held by the Settlement Administrator during the pendency of the administration shall be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds are either returned to the Defendants pursuant to Section 2.4(k) of this Agreement or distributed pursuant to the terms of this Agreement.
- 2.7 Service Award to Settlement Class Representative.** The Settlement Class Representative will seek a service award not to exceed \$2,500 for his efforts initiating the case and his role furthering the litigation and participating in its ultimate resolution. Defendants will not oppose a request that the Settlement Class Representative will receive from the Settlement Amount a service award of \$2,500 for his effort in prosecuting this Action to date and through entry of the Final Approval Order. Other than the value of his individual claim as a Member of the Settlement Class (which Named Plaintiff may seek to recover by submitting a Claim Form), the service award ultimately ordered by the Court shall be the only additional payment to the Settlement Class Representative under this Settlement Agreement or in connection with the Action, and Defendants shall not be liable for any additional payment to the Settlement Class Representative. A reduction by the Court or by an appellate court of the service award, if any, will not be considered a material modification of this Settlement Agreement, and shall not affect any of the Parties' rights and obligations under this Agreement, and shall only serve to reduce the amount of the service award payable to the Settlement Class Representative and increase the Net Settlement Amount. The Settlement Administrator will issue payment of the service award to Settlement Class Counsel on behalf of the Settlement Class Representative within fourteen (14) calendar days after the Final Settlement Date.

Any service award paid to the Settlement Class Representative shall be reported on an IRS Form 1099 and provided to the Settlement Class Representative.

2.8 Payments to Settlement Class Counsel. Defendants will not oppose a motion by Settlement Class Counsel for attorneys' fees of up to one-third (33.33 percent) of the \$450,000 Settlement Amount, plus reimbursement of litigation costs and expenses, to be paid from the Settlement Amount. Settlement Class Counsel's motion for attorneys' fees and costs shall be filed no later than fourteen (14) calendar days before the deadline for objections to and exclusions from the Settlement. Defendants shall not be liable for any additional payment to Settlement Class Counsel. A reduction by the Court or by an appellate court of the fees and costs awarded to Settlement Class Counsel will not be considered a material modification of this Agreement and shall not affect any of the Parties' rights and obligations under this Settlement Agreement, and shall only serve to reduce the amount of the fees and costs payable to Settlement Class Counsel from the Settlement Fund, if any, and increase the Net Settlement Amount. Any attorneys' fees and costs approved by the Court shall be paid by the Settlement Administrator to Settlement Class Counsel within fourteen (14) calendar days after the Final Settlement Date.

2.9 Defendants and Released Parties are not obligated (and will not be obligated) to compute, estimate, or pay any taxes on behalf of Named Plaintiff, Settlement Class Counsel, any Class Member, or the Settlement Administrator.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Preliminary Approval and Provisional Class Certification. As soon as practicable after this Agreement is signed, the Parties shall jointly move for a Preliminary Approval Order, provisionally certifying the Settlement Class and preliminarily approving the settlement embodied by this Settlement Agreement. The motion shall request that the Court:

- (a) preliminarily approve this Settlement Agreement as being the product of serious, informed, arm's-length non-collusive negotiations, having no obvious deficiencies, not improperly granting preferential treatment to the proposed Settlement Class Representative or segments of the Settlement Class, and falling within the range of possible approval;
- (b) preliminarily approve the form, method of providing notice, and content of the Notice described in Section 3.2 and attached as Exhibits A and B;
- (c) stay all further proceedings in the Action until the Court renders a final decision on approval of the Settlement Agreement;
- (d) set the date and time of the Fairness Hearing between ninety (90) and one hundred twenty (120) calendar days after entry of the Preliminary Approval Order, subject to the Court's availability.

The proposed Preliminary Approval Order must be materially identical to the form attached as Exhibit D. Settlement Class Counsel shall have the obligation to prepare initial drafts of the motion for preliminary approval and supporting documents and to provide such drafts to Red Robin's Counsel at least seven (7) calendar days before filing.

3.2 Notice to Class and Administration of Proposed Settlement. Subject to the Court entering a Preliminary Approval Order that is materially identical to the form attached as Exhibit D, the Parties agree that the Settlement Administrator will provide the Settlement Class with notice of the proposed Settlement as follows:

(a) **Class Notice Duties.** The Settlement Administrator, in cooperation with the Parties, shall be responsible for disseminating the Class Notice, substantially in the form attached as Exhibits A and B to this Agreement, and otherwise in accordance with the Notice Program as specified in the Preliminary Approval Order and this Agreement. Class Notice duties include, but are not limited to, the following:

- Developing a Notice Program;
- Implementing and arranging for publication of the Summary Notice via various forms of electronic and/or print media, including implementing media purchases;
- Establishing and publishing a website that contains the Detailed Notice and related documents as set forth in Section 3.2(b) below;
- Responding to requests from Settlement Class Counsel and Defendants' Counsel; and
- Otherwise implementing and assisting with the dissemination of the Notice of the Settlement.

The above-described Notice Program shall be designed to reach at least 70% of the Settlement Class Members, and shall commence approximately thirty (30) calendar days after entry of the Preliminary Approval Order. The Settlement Administrator may adjust the Notice Program as needed, before or after Notice has been disseminated, to ensure a 70% reach.

(b) **Settlement Website.** Starting no later than thirty (30) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will operate a website solely for the purposes of providing Notice of the Settlement Agreement and making available to Settlement Class Members a toll-free telephone number for Settlement Class Members to call for more information, a downloadable and online Claim Form, answers to frequently asked questions, and other pertinent case documents such as the Detailed Notice, the Complaint, the Settlement Agreement, and the Preliminary Approval Order. Within five (5) calendar days after Settlement Class

Counsel files the motion for attorneys' fees and costs, the Settlement Administrator will also post that motion on the Settlement Website.

- 3.3 Proof of Notice.** No later than ten (10) calendar days before the filing deadline for the motion in support of the Final Order and Approval, the Settlement Administrator must serve a declaration(s) on Settlement Class Counsel and Red Robin's Counsel confirming that the Settlement Administrator provided the Settlement Class with notice of the proposed settlement in accordance with Section 3.2, and information regarding the claims submitted.
- 3.4 Objections.** Any Settlement Class Member who has not opted out of the Settlement Class pursuant to Section 3.5, below, and who wants to object to the Settlement Agreement must mail a written objection, signed by the Settlement Class Member or his/her legal representative, to the Settlement Administrator, no later than seventy-five (75) calendar days after the Preliminary Approval Order, unless the Court orders otherwise. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. Written objections must include: (a) the name and case number of the Action, "*Bruun v. Red Robin Gourmet Burgers, Inc.*, District Court Clark County Nevada, Case No. A-20-814178-C; (b) the full name, address, e-mail address, and telephone number of the person objecting; (c) the words "Notice of Objection" or "Formal Objection"; and (d) in clear and concise terms, the legal and factual arguments supporting the objection, including an attestation, under the penalty of perjury, of facts demonstrating that the person objecting is a Settlement Class Member. The objecting Settlement Class Members must also provide all documents that will be used in support of the objection. Any Settlement Class Member that mails a written objection as described in this Section has the option to appear at the Fairness Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to the Settlement Agreement, as long as the Settlement Class Member or his or her attorney intending to make an appearance at the Fairness Hearing so indicated in an objection under a heading of "Notice of Intent to Appear." Only Settlement Class Members who timely mail objections containing Notices of Intent to Appear may speak at the Fairness Hearing. Settlement Class Members who fail to submit written objections as described in this Section will be deemed to have waived any objections and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to the Settlement Agreement, and the Settlement Class Members asserting such an objection shall be bound by the final determination of the Court. Within three (3) calendar days of receiving any objection, the Settlement Administrator will provide copies of the objection to Settlement Class Counsel and Red Robin's Counsel.
- 3.5 Opt-Out Requests.** Settlement Class Members may elect to opt out of the Settlement Class and not to be bound by this Settlement Agreement. To make this election, Settlement Class Members must send a letter, signed by the Settlement Class Member or his/her legal representative, to the Settlement Administrator stating (a) the name and case number of the Action, "*Bruun v. Red Robin Gourmet Burgers, Inc.*, District Court Clark County Nevada, Case No. A-20-814178-C; (b)

the full name, address, e-mail address, and telephone number of the person opting out; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than seventy-five (75) calendar days after the Preliminary Approval Order. The delivery date is deemed to be the date the opt out request is deposited in the U.S. Mail as evidenced by the postmark. Settlement Class Members who timely opt out of the Settlement Class shall: (a) have no right to receive any benefits under the Settlement Agreement; (b) not be bound by the terms of Settlement Agreement; and (c) have no right to object to the terms of the Settlement Agreement or be heard at the Fairness Hearing. Any Settlement Class Member who attempts to both object to and opt out of this Settlement Agreement will be deemed to have opted out and will forfeit the right to object to this Settlement Agreement or any of its terms. Opt outs can only be for individual Settlement Class Members, and cannot be brought on a “mass” or “class” basis.

- (a) **Opt-Out List.** The Settlement Administrator must serve on Red Robin’s Counsel and Settlement Class Counsel a list of Settlement Class Members who have timely and validly opted out of the Settlement Class no later than ten (10) calendar days before the filing deadline for the motion in support of the Final Order and Approval.

3.6 Final Order and Approval. Before the Fairness Hearing, the Settlement Class Representative through Settlement Class Counsel shall apply for Court approval of a proposed Final Approval Order, materially identical to the form attached as Exhibit E. The Parties’ counsel shall file with the Court a complete list of all Settlement Class Members who have validly and timely opted out of the Settlement Class. Settlement Class Counsel will draft the motion for final approval or application papers and provide Defendants’ Counsel with drafts of the motion or application and proposed order to review at least seven (7) calendar days before the filing deadline. The motion for final approval shall be filed no later than seven (7) calendar days before the Fairness Hearing. Red Robin shall be permitted, but not required, to file its own brief in support of the Final Order and Approval and, in any event, will not oppose the motion for final approval of the settlement.

3.7 Action Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Order and Approval on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement Agreement or enter the Final Order and Approval, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event, (a) the Preliminary Approval Order and/or Final Order and Approval and all of its or their provisions will be vacated by its or their own terms, (b) the Action will revert to the status that existed before the Settlement Agreement’s execution date, and (c) no term or draft of this Settlement Agreement, or any part of the Parties’ settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the Settlement Agreement or enter the Final Order and Approval

for any reason, or if the Final Settlement Date does not occur for any reason, Red Robin shall retain all its rights to object to the maintenance of the Action as a class action, Named Plaintiff shall retain all of his rights to seek certification of a class in the Action, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement Agreement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action. In addition, in such an event, the \$50,000 advance to the Settlement Administrator shall be refunded to Defendants, less any settlement administration and Class Notice costs that the Settlement Administrator incurred to that point, and Defendant shall have no recourse to recover those incurred settlement administration and Class Notice costs from Named Plaintiff, Settlement Class Counsel, or the Settlement Administrator.

4. APPROVAL AND RELEASES.

4.1 Approval and Enforcement. The Parties agree that should the Court grant final approval of the Settlement Agreement, the order shall include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of the Settlement Agreement and Final Approval Order.

4.2 Settlement Class Representative and Settlement Class Members' Releases. Upon final approval of this Settlement Agreement and entry of the Final Approval Order, the Settlement Class Representative and each Settlement Class Member, and their respective heirs, assigns, successors, agents, attorneys, executors, and representatives, shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, irrevocably, and forever released Red Robin, and its past or present directors, officers, managers, operators, employees, agents, insurers, owners, shareholders, investors, members, attorneys, advisors, consultants, representatives, partners, affiliates, related companies, parents, subsidiaries, joint ventures, independent contractors, clients, divisions, predecessors, successors, and assigns (collectively, the "Released Parties"), from any and all liabilities, claims, causes of action, damages, costs, attorneys' fees, losses, or demands, whether known or unknown, existing or suspected or unsuspected, that were or reasonably could have been asserted based on the factual allegations contained in the Action, relating to or arising out of the purchase of Stella Artois beer at a Red Robin restaurant during the Settlement Class Period (the "Released Claims"). The Released Claims include, but are not limited to, cross claims, third-party claims or counterclaims made by Settlement Class Representative and/or Settlement Class Members in the Action or which could have been brought by Settlement Class Representative or Settlement Class Members. Settlement Class Representative and Settlement Class Members specifically acknowledge that they may hereafter discover claims presently unknown or unsuspected or facts in addition to or different from those they now know or believe to be true with respect to the matters released. Settlement Class Representative and Settlement Class Members agree that it is their intent to fully, finally, and forever settle and release all such matters that may exist, or might have existed relating to the purchase of Stella Artois beer at a Red Robin restaurant, and that they intend to release fully and finally all claims,

known and unknown, suspected and unsuspected, that arose during the Settlement Class Period relating to the purchase of Stella Artois beer at a Red Robin restaurant. Except for proceedings to enforce the terms of this Settlement Agreement, upon entry of the Final Approval Order, the Settlement Class Representative and each Settlement Class Member shall be deemed to have, and by operation of the Final Approval Order shall have, agreed not to file, maintain, cause or knowingly permit the filing or maintenance of any lawsuit, administrative action, or other proceeding, in any state, federal or foreign court, or before any local, state, federal or foreign administrative agency, or any other tribunal, that arises from or relates to any of the Released Claims. Notwithstanding the foregoing, the Released Claims do not include any claims that Settlement Class Members may have against any of the Released Parties for personal injuries arising out of their purchase of Stella Artois beer at a Red Robin restaurant.

5. CONFIDENTIALITY.

5.1 Notwithstanding any other provision of this Settlement Agreement, the terms, conditions, settlement amounts and all other aspects of this Settlement Agreement shall remain strictly confidential until such time as the Parties file a motion for preliminary approval pursuant to Section 3.1. If, for any reason, the Parties do not file a motion for preliminary approval pursuant to Section 3.1, the terms, conditions, settlement amounts and all other aspects of this Settlement Agreement shall remain strictly confidential in perpetuity and will not be subject to disclosure to any person or entity other than the signatories hereto and their counsel. Additionally, the fact that the Parties conducted settlement negotiations and any proposed terms or representations made during such negotiations by any Party shall be inadmissible pursuant to Rule of Evidence 408. The Parties may share this Settlement Agreement if so required by law, and with their insurers, attorneys or accountants who will agree to be bound by this confidentiality provision. Nothing in this provision shall preclude Named Plaintiff, Settlement Class Counsel, or Defendants' Counsel from communicating with the Court as may be necessary to enforce the Settlement Agreement and/or permit approval of the Settlement Agreement.

6. COLLATERAL ATTACK AND PRECLUSIVE EFFECT.

6.1 This Settlement Agreement shall not be subject to collateral attack by any Settlement Class Member or any recipient of the Notice after the Final Approval Order is entered. Such prohibited collateral attacks shall include, but are not limited to, allegations that the procedures for claims administration were incorrect, allegations that the Settlement Class Member failed for any reason to receive timely notice of the Action, or allegations disputing the calculation of any Settlement Class Member's individual settlement amount.

6.2 Except as provided herein, neither this Settlement Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, Settlement Class Members, or their respective counsel in the Action or in any other action or

proceeding; provided, however, that nothing contained in this section shall prevent this Settlement Agreement from being used, offered, or received in evidence in any proceedings to enforce, construe, or finalize the settlement and this Settlement Agreement.

- 6.3** To the extent permitted by law, this Settlement Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted, or attempted to invalidate, nullify, or breach this Settlement Agreement, in whole or in part. Any Released Party may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim or issue preclusion or similar defense or counterclaim in any court or administrative or other tribunal.

7. ADDITIONAL PROVISIONS.

7.1 No Admission of Liability.

- (a) The Parties understand and acknowledge that this Settlement Agreement constitutes an accord and satisfaction, and a compromise and settlement, of disputed claims. No action taken by the Parties, either previously or in connection with the negotiations or proceedings connected with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, an acknowledgement or admission by any Party of any fault, liability, or wrongdoing of any kind whatsoever to any other Party, or an acknowledgement or admission that the Action is appropriate for class treatment for any purpose other than this Settlement Agreement. Neither this Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of this Settlement Agreement is, may be deemed to be, or may be used as an admission or evidence of the validity of any claim made by the Settlement Class Representative, Settlement Class Members, or Settlement Class Counsel.
- (b) This Settlement Agreement reflects the Parties' compromise and settlement of the disputed claims alleged in the complaint in the Action. Its provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law regarding wrongdoing by Red Robin, or matters respecting class certification, by any person or entity, and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of any such admission or concession.

- 7.2 Cooperation to Obtain Court Approval.** The Parties acknowledge that it is their intent to consummate this Settlement Agreement and agree to cooperate to the

extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement and to exercise their good faith best efforts to obtain preliminary and final approval from the Court. This includes, without limitation, cooperating in responding to objections, addressing any appeals or appellate issues, and obtaining any further orders from the Court as may be necessary, all in furtherance of the terms of this Settlement Agreement only, and without imposing any further obligations on any Party inconsistent with or in addition to the obligations expressly set forth in this Settlement Agreement. The Parties must execute and deliver any additional papers, documents, and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

- 7.3 Extensions of Time.** Unless otherwise ordered by the Court, the Parties may jointly agree in writing to reasonable extensions of time to carry out any provisions of this Settlement Agreement.
- 7.4 Real Parties in Interest.** In executing this Settlement Agreement, the Parties warrant and represent that they, including Named Plaintiff in his representative capacity on behalf of the Settlement Class, are the only persons having any interest in the claims asserted in this Action. Neither these claims, nor any part of these claims, have been assigned, granted, or transferred in any way to any other person, firm, or entity.
- 7.5 Voluntary Agreement.** The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.
- 7.6 Binding on Successors.** This Settlement Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.
- 7.7 Parties Represented by Counsel.** The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation and preparation of this Settlement Agreement; (b) they have read this Settlement Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to them the Settlement Agreement and its legal effect.
- 7.8 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Settlement Agreement and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge set forth in Section 4.2. Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is empowered to do so.
- 7.9 Integrated Agreement.** This Settlement Agreement and its exhibits constitutes a single, integrated written contract expressing the entire agreement of the Parties relating to the subject matter hereof, and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written and

whether by a Party or such Party's legal counsel, are merged herein. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided herein. This Settlement Agreement may not be changed, altered or modified except in writing and signed by all Parties.

- 7.10 Construction and Interpretation.** Neither a Party nor any of the Parties' respective attorneys will be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision in this Settlement Agreement in any judicial or other proceeding that may arise between them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.
- 7.11 Exhibits.** The exhibits to this Agreement are integral parts of the Agreement and Settlement and are incorporated into this Agreement as though fully set forth in the Settlement Agreement. Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.
- 7.12 Privilege Retained.** Nothing in this Settlement Agreement or the negotiations relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the attorney-client privilege or work product immunity, by any Party.
- 7.13 Governing Law.** This Agreement is governed by Nevada law and shall be construed in accordance with, and be governed by, the law of the State of Nevada, without regard to the principles thereof regarding choice of law.
- 7.14 Grammar.** The neuter form of a pronoun shall be considered to include within its meaning the masculine and feminine forms of the pronoun, and vice versa.
- 7.15 Later Discovered Facts.** The Parties acknowledge that they may later discover facts different from or in addition to those they now know or believe to be true regarding the matters released or described in this Settlement Agreement, and, even so, they agree that the Settlement Agreement, including without limitation the releases and waivers contained herein, shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. The Parties assume any and all risk of any mistake in connection with the true facts involved in the matters, disputes or controversies released or described in this Settlement Agreement or with regard to any facts now unknown to the Parties relating thereto.
- 7.16 Execution Date.** This Settlement Agreement is deemed executed on the date the Settlement Agreement is signed by all of the undersigned.
- 7.17 Counterparts.** This Settlement Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitute one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies and PDFs of executed copies of this Settlement Agreement may be treated as originals.

7.18 Recitals. The Recitals are incorporated by this reference and are part of the Settlement Agreement.

7.19 Severability. If any provision of this Settlement Agreement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement Agreement or, if that proves unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

7.20 List of Exhibits: The following exhibits are attached to this Agreement:

Exhibit A – Summary Notice

Exhibit B – Detailed Notice

Exhibit C – Claim Form

Exhibit D – [Proposed] Preliminary Approval Order

Exhibit E – [Proposed] Final Order and Approval

The Parties have agreed to the terms of this Agreement and have signed and dated below.

June ____, 2022

CHRISTOPHER BRUUN

Named Plaintiff

June ____, 2022

BAILEY ❖ KENNEDY

By: _____

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June ____, 2022

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Attorneys for Plaintiff and the Settlement Class

June ____, 2022

**RED ROBIN GOURMET BURGERS, INC., and
RED ROBIN INTERNATIONAL, INC.**

By: _____

Title: _____

Defendants

June ____, 2022

POLSINELLI PC

By:

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June ____, 2022

HARPER | SELIM

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