

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CASE NO: 4:24-cv-02263

ELIZABETH SMITH, and all others  
similarly situated pursuant to  
29 U.S.C. § 216(b),

Plaintiff(s),

v.

KEYSTONE ADVISORS, LLC,

Defendant.

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**STIPULATED COLLECTIVE ACTION SETTLEMENT AGREEMENT**

This Stipulated Collective Action Settlement is entered into by and among Plaintiff, ELIZABETH SMITH ("Plaintiff"), for herself individually and on behalf of the Settlement Collective, and Defendant, KEYSTONE ADVISORS, LLC ("Defendant") (Plaintiff and Defendant are referred to collectively as the "Parties"). This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

**RECITALS**

1. On June 14, 2024, Plaintiff, ELIZABETH SMITH, filed a putative collective action against her former employer, seeking unpaid overtime wages under the Fair Labor Standards Act ("FLSA") [D.E. 1]. The claims concerned alleged unlawful overtime wage practices allegedly committed by Defendant when Plaintiff worked for Defendant.

2. On July 15, 2024, Defendant filed its Original Answer, Defenses, and Affirmative Defenses to Plaintiff's Original Collective Action Complaint [D.E. 10].

3. Over a period of weeks after filing its Answer, the Defendant provided Plaintiff's Counsel with relevant information concerning the number of individuals belonging to the putative collective, the relevant pay data for these individuals, and the total amount of overtime wages allegedly owed if Plaintiff could prove her allegations at trial. The Parties entered into arms-length settlement negotiations and ultimately agreed to reach a collective settlement, pursuant to 29 U.S.C.

§ 216(b), that Plaintiff's Counsel believes is in the best interests of the Parties. The negotiations spanned several days, and the Parties extensively negotiated a collective-wide resolution and agreed to conditionally certify a settlement collective.

4. Plaintiff and Counsel for the Collective conducted a comprehensive examination of the law and facts relating to the allegations in the Action and Defendants' potential defenses. Plaintiff believes that the claims asserted in the Action have merit, that she and the collective would have ultimately succeeded in obtaining adversarial final certification of the proposed Settlement Collective, and that they would have prevailed on the merits at collective certification, and summary judgment or at trial. However, Plaintiff and Counsel for the Collective recognize that Defendant has raised factual and legal defenses in the Action that presented a significant risk that Plaintiffs would not prevail and/or that a collective would not be certified for trial. Counsel for Collective have also taken into consideration the uncertain outcome and risks of any litigation, especially in complex actions, as well as the difficulty and delay inherent in such litigation. Plaintiff and Counsel for Collective believe that this Agreement presents an exceptional result for the Settlement Collective. Plaintiff and Counsel for the Collective are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and based on good faith negotiations, and in the best interests of Plaintiff and the Settlement Collective. Moreover, the Settlement Collective will be given an opportunity to object to the terms of the settlement. Therefore, Plaintiff believes that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice, and forever barred pursuant to the terms and conditions set forth in this Settlement Agreement.

5. Defendant expressly denies the material allegations in the Action, as well as all allegations of wrongdoing and liability, including that it is subject to or violated the FLSA, and believes that it would have prevailed on the merits and that a collective would not be certified for trial. Nevertheless, Defendant has similarly concluded that this settlement is desirable to avoid the time, risk, and expense of defending protracted litigation, and to avoid the risk posed by the Settlement Collective's claims. Defendant thus desires to resolve finally and completely the pending and potential claims of Plaintiffs and the Settlement Collective.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, the Settlement Collective, and Defendant that, subject to the approval of the Court, and in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be



dismissed with prejudice, upon and subject to the terms and conditions set forth in this Settlement Agreement.

## AGREEMENT

### **I. DEFINITIONS**

As used herein, in addition to any definitions set forth elsewhere in this Settlement Agreement, the following terms shall have the meanings set forth below:

1.1 **“Action”** means the case captioned *Elizabeth Smith v. Keystone Advisors, LLC*, S.D. Tex. Case No. 4:24-cv-02263.

1.2 **“Defendant”** means Keystone Advisors, LLC.

1.3 **“Agreement”** or **“Settlement Agreement”** means this Stipulation of Collective Action Settlement and the attached Exhibits.

1.4 **“Approved Claim”** means a Claim Form submitted by a Settlement Collective Member that is (a) timely submitted in accordance with the directions on the Claim Form and the terms of this Agreement; (b) is fully completed and physically signed or electronically signed by the Settlement Collective Member; and (c) satisfies the conditions of eligibility for a Settlement Payment as set forth in this Agreement.

1.5 **“Claims Deadline”** means the date by which all Claim Forms must be postmarked or submitted to the Court to be considered timely, and shall be set as a date no later than sixty (60) calendar days following the Notice Date, subject to Court approval. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order, as well as in the Notice and the Claim Form.

1.6 **“Claim Form”** means the document substantially in the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, which shall be completed by Settlement Collective Members who wish to file a claim for a Settlement Payment, shall be available in paper and electronic format. The Claim Form will require claiming Settlement Collective Members to provide the following information: (i) full name; (ii) current U.S. Mail address; (iii) current contact telephone number and e-mail address; and (iv) a statement that he or she worked for Defendant between June 14, 2021 and July 17, 2024 as an Insurance Sales Agent that worked more than 40 hours in one or more workweeks. The Claim Form will not require notarization, but will require affirmation that the information supplied is true and correct.

1.7 **“Counsel for the Collective”** means attorneys Jordan Richards and Michael Miller of USA Employment Lawyers – Jordan Richards PLLC, and Joshua Eggnatz of Eggnatz Pascucci, P.A.

1.8 **“Collective Representative”** means the named Plaintiff in the Action, Elizabeth Smith.

1.9 **“Court”** means the United States District Court for the Southern District of Texas, the Honorable Andrew S. Hanen presiding, or any judge who shall succeed him as the Judge assigned to the Action.

1.10 **“Defendant’s Counsel”** means attorney Stephanie M. Harp of Stephanie M. Harp Attorney at Law.

1.11 **“Effective Date”** means one business day following the later of: (a) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order without any material modification, of all proceedings rising out of the appeal(s) including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on appeal with respect to the Final Approval Order.

1.12 **“Escrow Account”** means the qualified interest-bearing account to be established by the Settlement Administrator, under terms acceptable to Counsel for the Collective and Defendant, at a depository institution insured by the Federal Deposit Insurance Corporation for the sole purpose of holding the Settlement Fund.

1.13 **“Fee Award”** means the amount of attorneys’ fees and reimbursement of costs awarded to Counsel for the Collective by the Court, which shall be paid out of the Settlement Fund.

1.14 **“Final Approval Hearing”** means the hearing before the Court where Plaintiff will request that the Final Approval Order be entered by the Court finally approving the Settlement as fair, reasonable, adequate, and made in good faith, and approving the Fee Award. If required by orders of the Court, the Final Approval Hearing may be held by telephone or videoconference.

1.15 **“Final Approval Order”** means the final approval order to be entered by the Court approving the settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing, and dismissing the Action with prejudice.

1.16 **“Incentive Award and Settlement of All Employment-Related Claims”** means the proposed amount of two thousand five hundred dollars (\$2,500.00) to be paid by Plaintiff as a service



award and in exchange for a general release of all employment-related claims, and to be approved at the Final Approval Hearing.

1.17 **"Net Settlement Fund"** means the Settlement Fund less attorneys' fees, costs, incentive and service awards, and Settlement Administration Expenses.

1.18 **"Notice"** means the notice of the proposed Settlement preliminarily approved by the Court, which is to be disseminated to the Settlement Collective substantially in the manner set forth in this Settlement Agreement, fulfills the requirements, and is substantially in the form of Exhibits "A" and "B" attached hereto.

1.19 **"Notice Date"** means the date by which the Notice is disseminated to the Settlement Collective, which shall be a date no later than twenty-eight (28) days after entry of the Preliminary Approval Order.

1.20 **"Objection Deadline"** means the date by which a written objection to the Settlement Agreement from the Settlement Collective submitted by a person within the Settlement Collective must be filed with the Court and/or postmarked or e-mailed (for exclusion requests), which shall be designated as a date approximately sixty (60) days after the Notice Date, as approved by the Court. The Objection Deadline will be set forth in the Notice.

1.21 **"Plaintiff"** means Elizabeth Smith.

1.22 **"Plaintiffs"** means all members of the Settlement Collective, including Plaintiff.

1.23 **"Preliminary Approval Order"** means the Court's order preliminarily approving the proposed Agreement, preliminarily certifying the Settlement Collective for settlement purposes, and approving the form and manner of the Notice.

1.24 **"Released Claims"** means any and all wage and hour claims, suits, actions, controversies, demands, or causes of action, premised upon statute, contract, common law or otherwise, whether seeking liquidated or actual damages, penalties, specific performance, injunctive relief, attorneys' fees, costs, interest or any other relief, against Defendant or other Releases that arise out of, relate to or are connected with the alleged violation of or non-compliance with the Fair Labor Standards Act ("FLSA") or otherwise arising from the Defendant's employment of the Collective Members from June 14, 2021 through July 17, 2024.

1.25 **"Released Parties"** means Keystone Advisors, LLC and Keystone Advisors, LLC's direct and indirect past, present, and future parents, affiliates, subsidiaries, partners, franchisors, divisions, predecessors, insurers, reinsurers, professional employment organizations,

representatives, successors, and assigns, and their current and former employees, attorneys, officers, owners, members, managing directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries, both individually and in their business capacities.

1.26 **"Releasing Parties"** means Plaintiffs and their respective past, present and future heirs, children, spouses, beneficiaries, conservators, executors, estates, administrators, assigns, agents, consultants, independent contractors, insurers, attorneys, accountants, financial and other advisors, investment bankers, underwriters, lenders, and any other representatives of any of these persons and entities.

1.27 **"Relevant Time Period"** means June 13, 2021, through July 17, 2024.

1.28 **"Settlement"** means the final resolution of the Action as embodied by the terms and conditions of this Agreement.

1.29 **"Settlement Administrator"** means Simpluris, Inc., subject to approval of the Court, which shall perform all duties and responsibilities of Settlement Administrator and will oversee and administer the settlement in this case consistent with any Court Order. The Settlement Administrator shall provide notice to the Collective, verify addresses, skip trace as necessary, communicate with Collective Members, direct and advise Defendant to disburse payments to Collective Members who timely submit a claims form to participate in the settlement, and other administrative activities contemplated in this Settlement Agreement. Payment to the Settlement Administrator shall be made from the total amount of fees and costs awarded to Plaintiff's Counsel.

1.30 **"Settlement Administration Expenses"** means the expenses incurred by the Settlement Administrator in or relating to administering the Settlement, providing Notice, processing Claim Forms, mailing checks for Settlement Payments, and other such related expenses, with all such expenses to be paid from the Settlement Fund.

1.31 **"Settlement Collective"** means all Insurance Sales Agents employed by Defendant from June 14, 2021, to July 17, 2024, who were allegedly misclassified as independent contractors and worked more than forty (40) hours in a workweek.

1.32 **"Settlement Collective Member" or "Collective Member"** means a person who falls within the definition of the Settlement Collective and who timely submits a Claim Form.

1.33 **"Settlement Fund"** means the total maximum amount of Twenty-Five Thousand Dollars (\$25,000.00) to be paid by Defendant pursuant to the terms of this Settlement.



1.34 **“Settlement Payment”** means the check that each Settlement Collective Member with an Approved Claim will receive, the amount of which will be based upon the number of overtime hours they worked between June 14, 2021, and July 17, 2024. These Settlement Payments will be a portion of the Settlement Fund, after deduction of any Fee Award, Settlement Administration Expenses, and payment to the Plaintiff for incentive award. The calculation formula for payments will be as follows: each Settlement Collective Member with an Approved Claim will receive a pro-rate share from the Settlement Fund, in an amount up to and not to exceed their respective total overtime wages owed, for every overtime hour worked between June 14, 2021, and July 17, 2024.

## **II. SETTLEMENT RELIEF**

### **2.1 Settlement Payments to Settlement Collective Members**

a. Settlement Collective Members shall have until the Claims Deadline to submit Claim Forms. Each Settlement Collective Member who submits an Approved Claim shall be entitled to a Settlement Payment. The Settlement Administrator shall send such Settlement Payments via First Class U.S. Mail to the address provided on the Approved Claim Form.

b. Within ten (10) calendar days after the Claims Deadline, the Settlement Administrator shall process all Claim Forms submitted by Settlement Collective Members and shall determine which claims are valid and initially approved and which claims are initially rejected. The Settlement Administrator may request additional information prior to initially accepting or rejecting any Claim Form submitted. The Settlement Administrator shall employ reasonable procedures to screen Claim Forms for abuse and/or fraud.

c. Within ten (10) days of the Claims Deadline, the Settlement Administrator will submit to Counsel for the Defendant a report listing all initially approved and initially rejected Claims.

d. Counsel for the Parties shall have ten (10) days after the date they receive the report listing the initially approved and initially rejected claims to audit and challenge any initially approved or initially rejected claims. Counsel for the Parties shall meet and confer in an effort to resolve any disputes or disagreements over any initially approved or rejected claims.

e. The Settlement Administrator shall award payment from the Settlement Fund in pro-rata shares to Collective Members who submitted approved claims. In doing so, the Settlement Administrator will calculate each participating Collective Member's percentage share which is based on the total number of participating Collective Members in relation to the number

of overtime hours they worked. Any funds that are not claimed by a member of the Settlement Collective will remain in the Settlement Fund to be divided on a pro-rata basis based on the number of overtime hours each participating Settlement Collective Member worked in relation to the total sum of regular hours worked by the Settlement Collective.

f. The Settlement Administrator shall send each Settlement Collective Member with an Approved Claim two separate Settlement Payments by check. The First Settlement Payment shall be reported as wage income on a W-2 minus all applicable deductions and withholdings (50% of the total payment). The Second Settlement Payment shall be non-wage income reported on a Form 1099 (50% of the total payment). All Settlement Payments will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) calendar days after the date of issuance.

g. To the extent that a check issued to Settlement Collective Members is not cashed within ninety (90) days after the date of issuance, the check will be void. Uncashed checks will be voided by Defendant after ninety (90) days of issuance and any and all such funds shall revert back to Defendant.

h. Settlement Collective Members may request replacement checks within the ninety (90) day period after initial issuance, but such checks will not extend the ninety (90) day check cashing period from the date checks were originally issued.

i. Following the expiration of the Claims Period and issuance of payment, any unclaimed or leftover amounts, or any amounts stemming from uncashed checks issued to Settlement Collectives Members, shall revert back to Defendant. The reversion of any outstanding funds remaining shall be released to Defendant via their counsel within 30 calendar days following the expiration of the ninety (90) day period addressed above.

j. Should Defendant fail to make any of the Settlement Payments in Section 2.1 as described above, or should any of the checks be returned for non-sufficient funds or any other reason, Counsel for the Collective shall give written notice via e-mail to Defendant's Counsel, Stephanie M. Harp, at [harp@texastrialatty.com](mailto:harp@texastrialatty.com). If Defendant fails to cure said payment breach within ten (10) days of receiving written notification via e-mail, then Plaintiffs shall be entitled to obtain a default final judgment against Defendant for all amounts due and owing under this Agreement, minus all payments made and all reasonable attorney's fees and costs incurred in having to seek a default judgment.



### III. RELEASE

3.1 **The Release.** Upon the Effective Date, and in consideration of the settlement relief and other consideration described herein, the Releasing Parties, and each of them, shall be deemed to have released, and by operation of the Final Approval Order shall have, fully, finally, and forever released, acquitted, relinquished, and completely discharged the Released Parties from any and all Released Claims, through July 17, 2024.

### IV. NOTICE TO COLLECTIVE; RIGHTS TO OBJECT

4.1 **Collective List.** Defendant shall provide the information in Defendant's possession, custody, or control, regarding the names, telephone numbers, e-mail addresses (if available), U.S. Mail addressees (if available) and Social Security Numbers (if available) of the individuals in the Settlement Collective to the Counsel for Collective as soon as practicable, but by no later than fourteen (14) calendar days after entry of the Preliminary Approval Order. In addition, Defendant shall provide each individual's total overtime hours worked for the Defendant between June 14, 2021, and July 17, 2024, to the Settlement Administrator.

4.2 **Methods and Form of Notice.** The Notice shall include the best notice practicable, including but not limited to:

a. *Direct Notice.* The Settlement Administrator shall send Notice via e-mail and U.S. Mail substantially in the form attached as Exhibit "A" to all persons in the Settlement Collective for whom an e-mail address is available on the Collective List no later than the Notice Date.

4.3 **Right to Object or Comment.** Any person in the Settlement Collective who intends to object to this Settlement Agreement must present the objection in writing, which must be personally signed by the objector and must include: (a) the Settlement Collective Members' full name and current address; (b) a statement why he or she believes himself or herself to be a member of the Settlement Collective including the dates during which the individual was employed by Defendant; (c) the specific grounds for the objection; (d) all documents or writings that the Settlement Collective Member desires the Court to consider; (e) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; and (f) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel, who must file an appearance or seek *pro hac vice* admission).

All written objections must be filed with the Court and e-mailed to Counsel for the Collective and Defendants' Counsel no later than the Objection Deadline. Any person in the Settlement Collective who fails to timely file an objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of this section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties, shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Settlement Agreement or the Final Approval Order by appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other action or proceeding.

## **V. SETTLEMENT ADMINISTRATION**

### **5.1 Settlement Administrator's Duties.**

a. *Dissemination of Notices.* The Settlement Administrator shall disseminate Notice as provided in Section 4 of this Settlement Agreement. If a Notice is returned with a forwarding address, the Settlement Administrator shall promptly mail a new Notice to the forwarding address. If a Collective Notice is returned without a forward address, the Settlement Administrator shall promptly seek to determine the individual's current address (including by performing, if needed, a standard Level 2 Skip Trace in the manner that the Settlement Administrator customarily performs skip traces, and, to facilitate this process, the Settlement Administrator may use the individual's social security number, if available). If a new address is not obtained through a standard Level 2 skip tracing (or any other reasonable or customary methods available to the Settlement Administrator, such as telephoning or emailing the individual), no further effort need be taken.

b. *Maintenance of Records.* The Settlement Administrator shall maintain reasonably detailed records of its activities under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and such records will be made available to Defendants' Counsel upon request. Neither Plaintiffs nor Counsel for the Collective shall use the Claim Forms, or any information contained in the Claim Forms, for any purpose other than those specifically set forth in Section 2.1 above, and shall not disclose the Claim Forms, or any information contained in the Claims Forms, to any other person or entity. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide



weekly reports to Counsel for the Collective and Defendant's Counsel with information concerning the dissemination of Notices, the number of Consent to Join Forms submitted, the number of Approved Claims, objections, and other matters relating to administration and implementation of the Settlement.

c. *Receipt of Objections.* The Settlement Administration shall receive objections from Settlement Collective Members and provide to Counsel for the Collective and Defendant's Counsel a copy therefore within five (5) calendar days of its receipt thereof. If the Settlement Administrator receive any objections from Settlement Collective Members after the deadline for the submission thereof, the Settlement Administrator shall promptly provide copies thereof to Counsel for the Collective and Defendant's Counsel.

d. *Timing of Settlement Payments.* The Defendant shall make the Settlement Payments contemplated in Section 2 of this Settlement Agreement to the Settlement Administrator's escrow account within fourteen (14) calendar days after the Effective Date.

## **VI. PRELIMINARY APPROVAL AND FINAL APPROVAL**

6.1 **Preliminary Approval.** Promptly after execution of this Settlement Agreement, Counsel for the Collective shall prepare an *Agreed Motion* for Preliminary Approval of Collective Settlement. Plaintiff shall also submit this Settlement Agreement to the Court and move the Court to enter the Preliminary Approval Order, which shall include, among other provisions, a request that the Court:

- a. Appoint Elizabeth Smith as Collective Representative of the Settlement Collective for settlement purposes only;
- b. Appoint Counsel for the Collective to represent the Settlement Collective;
- c. Certifying the Settlement Collective under 29 U.S.C. § 219(b) for settlement purposes only;
- d. Preliminarily approve this Settlement Agreement for purposes of disseminating Notice to the Settlement Collective;
- e. Approve the form and contents of the Notice and the method of its dissemination to members of the Settlement Collective; and
- f. Schedule a Final Approval Hearing to review comments and/or objections regarding this Settlement Agreement, to consider its fairness, reasonableness, and adequacy, to

consider the application for a Fee Award, and to consider whether the Court shall issue a Final Approval Order approving this Settlement Agreement and dismissing the Action with prejudice.

**6.2 Final Approval.** After Notice to the Settlement Collective is given, Counsel for the Collective shall move the Court for entry of a Final Approval Order, which shall include, among other provisions, a request that the Court:

- a. find that it has personal jurisdiction over all Settlement Collective Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;
- b. approve the Settlement as fair, reasonable and adequate as to, and in the best interests of, the Settlement Collective Members; make a finding that the Agreement was entered into in good faith, and direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;
- c. find that the Notice implemented pursuant to the Settlement Agreement: (1) constitutes the best practicable notice under the circumstances; (2) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Collective of the pendency of the Action and their rights to object to this Settlement Agreement and to appear at the Final Approval Hearing; (3) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (4) fulfills the requirements of Due Process and 29 U.S.C. § 216(b);
- d. find that the Collective Representative and Counsel for the Collective adequately represented the Settlement Collective for purposes of entering into and implementing the Settlement Agreement;
- e. dismiss the Action on the merits with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;
- f. incorporate the Release set forth above, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;
- g. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (i) shall be consistent in all material respects with the Final Approval Order; and (ii) do not limit the rights of Settlement Collective Members;
- i. without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement



and interpretation of this Settlement Agreement and the Final Approval Order, and for any other necessary purpose; and

j. incorporate any other provisions, consistent with the material terms of this Settlement Agreement, as the Court deems necessary and just.

6.3 **Cooperation.** The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

## **VII. TERMINATION OF THE SETTLEMENT AGREEMENT & CONFIRMATORY DISCOVERY**

7.1 **Termination.** Subject to Section 9 below, the Collective Representative, on behalf of the Settlement Collective, or Defendant, shall have the right to terminate this Agreement by providing written notice of the election to do so to Counsel for the Collective or Defendant's Counsel within ten (10) days of any of the following events: (i) the Court's refusal to enter the Preliminary Approval Order approving of this Agreement in any material respect; (ii) the Court's refusal to enter the Final Approval Order in this Action in any material respect; (iii) the date upon which the Final Approval Order is modified or reversed in any material respect by the appellate court or the Supreme Court; or (iv) the date upon which an Alternative Approval Order is entered, as defined in Paragraph 9.1 of this Agreement, is modified or reversed in any material respect by the appellate court or the Supreme Court.

7.2 **Confirmatory Discovery.** The Parties do not anticipate the need for confirmatory discovery given the breadth of documentation provided during settlement negotiations.

7.3 **Court Approval.** This Settlement Agreement is contingent upon the Court's approval. If the Court does not grant preliminary or final approval of any of the terms in this Settlement Agreement or the Effective Date does not occur, this Settlement Agreement may be voided at any Party's option, in which case this Settlement Agreement will become null and void, and shall not be used for any purpose, including without limitation, in connection with the Action or any other lawsuit, administrative, or other legal proceeding, claim, investigation, or complaint. In such an event, the Parties shall resume the Action. The Parties shall meet and confer in good faith either in person or remotely, over a period of no less than fifteen (15) calendar days, regarding potential alternative solutions before any party voids this Settlement Agreement. In the event this Settlement Agreement is so voided, the Action will proceed as if no settlement had been attempted.

In that event, Defendants shall retain the right to assert all applicable defenses and challenge all claims and allegations, including, but not limited to, contesting whether the Action should be maintained as collective action and otherwise contesting the merits of the claims being asserted by the Plaintiffs in the Action.

**VIII. COUNSEL FOR THE COLLECTIVE'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND ADDITIONAL CONSIDERATION FOR PLAINTIFFS.**

8.1 Defendant agrees to pay Counsel for the Collective reasonable attorneys' fees and unreimbursed expenses incurred in the Action as the Fee Award, which shall be paid from the Settlement Fund. The amount of the Fee Award shall be determined by the Court based on petition from Counsel for the Collective. Counsel for the Collective has agreed, with no consideration from Defendants, to limit their request for attorneys' fees and unreimbursed costs to Fifteen Thousand Dollars (\$15,000.00). However, in no event shall Defendant be obligated to pay more than the total Gross Fund amount of \$25,000.00. In the event that the total Overtime Wage Fund amount and awarded Attorney's Fees and Costs exceed the total Gross Fund amount, Plaintiff's Counsel agrees to reduce their fees and costs and accept less than the awarded Attorney's Fees and Costs so that Defendant's total settlement payment does not exceed the Gross Fund amount. Payment of the Fee Award and Costs shall be made from the Settlement Fund. Should the Court award less than the amount sought by Counsel for the Collective, the difference in the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Collective Members as Settlement Payments. The Parties agree that the amount of attorney's fees and costs has been negotiated separate and apart and without regard to the recovery for Plaintiff and the Collective.

8.2 The Fee Award and Costs in an amount up to Fifteen Thousand Dollars (\$15,000.00) shall be payable in one (1) payment and shall be delivered within thirty (30) calendar days after the Effective Date. Payment of the Fee Award and Costs shall be made via check made payable to Jordan Richards PLLC after providing necessary relevant tax information. The payment shall be delivered via UPS or Federal Express to: Jordan Richards PLLC, Attn: Jordan Richards, Esq., 1800 SE 10<sup>th</sup> Ave. Suite 205 Fort Lauderdale, Florida 33316.

8.3 Defendant agrees that Plaintiff, Elizabeth Smith, will be paid separate and additional consideration in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) from the Settlement Fund, in addition to any Settlement Payment pursuant to this Settlement Agreement in



consideration for a general release for Elizabeth Smith. Should the Court approve less than this amount to be awarded to Elizabeth Smith the difference in the amount sought and the amount ultimately awarded pursuant to this section shall remain in the Settlement Fund and be distributed to Settlement Collective Members as Settlement Payments. Any award pursuant to this section shall be paid from the Settlement Fund (in the form of a check made payable to Elizabeth Smith that is sent care of Counsel for the Collective), in one payment. The Payment to Elizabeth Smith shall be made within thirty (30) calendar days after the Effective Date.

8.4 Should Defendant fail to make any of the Settlement Payments in Section 8 as described above, or should any of the checks be returned for non-sufficient funds or any other reason, Counsel for the Collective shall give written notice via e-mail to Defendant's Counsel, Stephanie M. Harp at harp@texastrialatty.com. If Defendant fails to cure said payment breach within ten (10) days of receiving written notification via e-mail, then Plaintiffs shall be entitled to obtain a default final judgment against Defendant for all amounts due and owing under this Agreement, minus all payments made and all reasonable attorney's fees and costs incurred in having to seek a default judgment.

**IX. 28S OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

9.1 The Effective Date shall not occur unless and until each and every one of the following events occurs, and shall be the date upon which the last (in time) of the following events occurs subject to the provisions in Section 1.11:

- (a) This Agreement has been signed by the Parties.
- (b) The Court has entered the Preliminary Approval Order approving the Agreement;
- (c) The Court has entered an order finally approving the Agreement, following Notice to the Settlement Collective and a Final Approval Hearing, and has entered the Final Approval Order, or a judgment materially identical to the Final Approval Order, and such order or judgment has become final and unappealable; and
- (d) In the event the Court enters an approval order and final judgment in a form other than that provided above ("Alternative Approval Order") to which the Parties have consented, that Alternative Approval Order has become final and unappealable.

9.2 If some of all of the conditions specified in Section 9.1 are not met, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Agreement shall be canceled and terminated subject to Section 9, unless Counsel for the Collective and Defendants' Counsel mutually agree in writing to proceed with this Settlement Agreement. If any Party is in material breach of the terms hereof, any other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Settlement Agreement on notice to all other Parties. Notwithstanding anything herein, the Parties agree that the Court's decision as to the amount of the Fee Award to Counsel for the Collective set forth above or the consideration payments to Plaintiffs, regardless of the amounts awarded, shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Agreement.

9.3 If this Settlement Agreement is terminated or fails to become effective for the reasons set forth above, the Parties shall be restored to their respective positions in this Action as of the date of the signing of this Agreement. In such event, any Final Approval Order or other order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the Action as if this Settlement Agreement had never been entered into.

## **X. MISCELLANEOUS PROVISIONS**

10.1 The Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Settlement Agreement. Counsel for the Collective and Defendants' Counsel agree to cooperate with one another in seeking entry of the Preliminary Approval Order and the Final Approval order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement Agreement.

10.2 The Parties agree to refrain from making false statements that are disparaging, demeaning, or defamatory about each other, including but not limited to communications on social media websites such as Facebook, Twitter, LinkedIn, or Glassdoor on blogs, by text or email or other electronic means. This provision does not prohibit the Parties from making truthful statements about the terms or conditions of Plaintiff's employment, or from exercising Plaintiff's rights under



the National Labor Relations Act, government whistleblower programs, or whistleblowing statutes or regulations. Plaintiff agrees to not solicit any current or former employees of Keystone Advisors, LLC to join any lawsuit or file any lawsuit. Consistent with the ABA model rules of professional conduct and any applicable state bar equivalent, Counsel for the Plaintiff and Collective, including the undersigned as well as all members of Counsel's firm and co-Counsel represent and warrant that, other than Plaintiff, it (i) has not been retained by any other individuals in connection with the subject matter of the lawsuit; (ii) is not presently aware of any other person or attorney who intends to make demands or bring litigation based upon the subject matter in the lawsuit; (iii) has not been notified or otherwise informed of any intention or consideration to bring litigation against the Defendant based upon the subject matter in the lawsuit and (iv) Counsel for the Plaintiff and Collective, including the undersigned as well as all members of Counsel's firm and co-Counsel have no present plan or present intention, to represent any other clients, other than as counsel for the Plaintiff and collective in this lawsuit. Nothing in this Section shall be construed as a restraint on Counsel's right to practice law in contravention of the laws or rules of professional conduct of any U.S. state.

10.3 Plaintiffs agree not to disclose any information regarding the underlying facts leading up, or the existence or substance of this Agreement, except to Plaintiffs' spouses, tax advisor, or an attorney with whom Plaintiffs chooses to consult regarding Plaintiffs' consideration of this Agreement. Plaintiffs agree that in the event Plaintiffs discloses the terms of this Agreement to Plaintiffs' spouse, tax advisor, or legal counsel, Plaintiffs will instruct Plaintiffs' spouse, tax advisor, or legal counsel not to reveal, disseminate by publication of any sort, or release in any manner or means this Agreement (except as may be required by legal process) to any other person or to any member(s) of the public, or to any newspaper, magazine, radio station, television station or any future, current, or former employee, representative, agent, customer, creditor, or competitor of Defendant without the express written consent of Defendant.

10.4 Each signatory to this Agreement represents and warrants (a) that he, she, or it has all requisite power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated herein; (b) that the execution, delivery, and performance of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of each signatory; and (c) that this Settlement Agreement has been duly and validly executed and delivered by each signatory and constitutes its legal, valid and binding obligation.

10.5 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and each or any of them, on the one hand, against the Released Parties, and each or any of the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendants, or each or any of them, in bad faith or without a reasonable basis.

10.6 The Parties have relied upon the advice and representation of counsel, selected by them, concerning the claims hereby released. The Parties have read and understand fully this Settlement Agreement and have been fully advised as to the legal effect hereof by counsel of their own selection and intend to be legally bound by the same.

10.7 Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant risks, inconveniences, expenses, and contingencies. Accordingly, whether the Effective Date occurs or this Settlement is terminated, neither this Settlement Agreement nor the Settlement contained herein, nor any court order, communication, act performed or document executed pursuant to or in furtherance of this Settlement Agreement or the Settlement:

a. is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them as an admission, concession or evidence of, the validity of any Released Claims, the appropriateness of collective certification, the truth of any fact alleged by Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the Settlement Fund, Settlement Payment or the Fee Award, or of any alleged wrongdoing, liability, negligence, or fault of the Released parties, or any of them;

b. is, may be deemed, or shall be used, offered, or received against Defendants as, an admission, concession or evidence of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

c. is, may be deemed, or shall be used, offered, or received against Plaintiffs or the Settlement Collective, or each or any of them as an admission, concession or evidence of, the infirmity or strength of any claims asserted in this Action, the truth or falsity of any fact alleged by Defendant, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;



d. is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released parties, in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. However, the Settlement, this Settlement Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Settlement Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Settlement Agreement. Moreover, if this Settlement Agreement is approved by the Court, any of the Released Parties may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against such parties;

e. is, may be deemed, or shall be construed against Plaintiff and the Settlement Collective, or each or any of them, or against the Released parties, or each or any of them, as an admission or concession that the consideration to be given represents an amount equal to, less than or greater than the amount that could have or would have been recovered after trial; and

f. is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff and the Settlement Collective, or each and any of them, or against the Released parties, or each or any of them, that any of Plaintiff's claims are with, or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount;

g. may be disclosed to a third party other than reasonably necessarily to obtain Court approval through the filing of a motion. Collective Representative and Counsel for the Collective will not discuss the Settlement with the media, the press, on any website, podcasts, social media site, or generally to the public.

10.8 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

10.9 The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Settlement Agreement.

10.10 All of the Exhibits to this Settlement Agreement are material and integral parts hereof and are expressly and fully incorporated herein by reference.

10.11 This Settlement Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior

negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred in any way related to the Action.

10.13 Plaintiff represents and warrants that he has not assigned any claim or right or interest relating to any of the Released Claims against the Released Parties to any other person or party and that he is fully entitled to release the same.

10.14 This Settlement 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. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of this Settlement Agreement. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Settlement Agreement.

10.16 This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Florida without reference to the conflicts of laws provisions thereof.

10.17 This Settlement Agreement is deemed to have been prepared by counsel for all Parties, as a result of good-faith, arm's-length negotiations among the Parties. Whereas all parties have contributed substantially and materially to the preparation of this Settlement Agreement, it shall not be construed more strictly against one Party than another.

10.18 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to the undersigned counsel: Jordan Richards, Esq., [jordan@jordanrichardspc.com](mailto:jordan@jordanrichardspc.com), USA Employment Lawyers, 1800 SE 10<sup>th</sup> Ave. Suite 205, Fort Lauderdale, Florida, 33316; Stephanie M. Harp, Esq. [harp@texastrialatt.com](mailto:harp@texastrialatt.com) Stephanie M. Harp Attorney at Law, P.O. Box 450146 Houston, Texas 77245.



Plaintiff, Elizabeth Smith,  
on behalf of herself and the  
Settlement Collective

By:   
Elizabeth Smith (Oct 14, 2024 17:46 EDT)

Role: P

Date: 14/10/24

Defendant, Keystone Advisors, LLC

By:   
Veronica Neri (Oct 14, 2024 12:11 CDT)

Role: President

Date: 10/14/2024







# Settlement Agreement - Smith v. Keystone Advisors

Final Audit Report

2024-10-14

Created:	2024-10-14
By:	USA Employment Lawyers (intake@usaemploymentlawyers.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYNPa1WM3Lx0f4JfDyRvqEbfGrxP72L-

## "Settlement Agreement - Smith v. Keystone Advisors" History

-  Document created by USA Employment Lawyers (intake@usaemploymentlawyers.com)  
2024-10-14 - 7:18:59 PM GMT
-  Document emailed to Elizabeth Smith (esmithinsuranceagent@gmail.com) for signature  
2024-10-14 - 7:19:14 PM GMT
-  Email viewed by Elizabeth Smith (esmithinsuranceagent@gmail.com)  
2024-10-14 - 9:03:40 PM GMT
-  Signer Elizabeth Smith (esmithinsuranceagent@gmail.com) entered name at signing as Elizabeth Smith  
2024-10-14 - 9:46:30 PM GMT
-  Document e-signed by Elizabeth Smith (esmithinsuranceagent@gmail.com)  
Signature Date: 2024-10-14 - 9:46:32 PM GMT - Time Source: server
-  Agreement completed.  
2024-10-14 - 9:46:32 PM GMT