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Attorney for Plaintiff  
420 Lexington Avenue, Suite 2620  
New York, New York 10170  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

GERARD CERDA, individually and on  
behalf of all persons similar situated,

Plaintiff,

v.

RESTAURANT ASSOCIATES, INC., and  
RA TENNIS CORP.,

Defendants.

No. 04 CV 3394  
(DLI)(RML)

**AGREEMENT OF SETTLEMENT**

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This Agreement of Settlement (the "Agreement") is entered into on this 23 day of March, 2006, by and between RESTAURANT ASSOCIATES, INC., and RA TENNIS CORP. (collectively "Associates") and GERARD CERDA ("Cerde" or the "Plaintiff"), individually and on behalf of the Class as defined herein. This Agreement is intended by the Settling Parties to constitute a final and complete resolution and settlement of the Released Claims, as defined in paragraph A(6) hereof, pursuant to the terms and conditions of this Agreement (the "Settlement").

**A. DEFINITIONS**

1. The "Class" and "Class Members" mean all non-white persons who were employed by Associates for more than one day as

concession vendors at the United States Open Tennis Tournament (the "US Open") held in Flushing, Queens, New York, during the months of August and September 2003, and whose total compensation for the duration of the tournament did not exceed \$4,000 in 2003.

2. "Claimant" means any Class Member who does not opt out of the class as set forth in paragraph A(8) below, who timely files a Claim Form as set forth in Exhibit B hereto (or in such form and manner as the Court shall prescribe) and whose claim has been allowed pursuant to the terms of this Agreement.

3. "Settling Parties" means the Plaintiff and Associates.

4. "Preliminary Approval Order" means the Order to be entered by the Court substantially in the form of Exhibit A hereto.

5. "Final Approval Order" means the Order to be entered by the Court upon a hearing following the completion of the period specified in the Class Notice.

6. "Released Claims" or "Settled Claims" means all claims regarding the year 2003, together with any and all actual and potential claims, demands, actions, lawsuits, and causes of action, whether based in law or equity, pursuant to federal, state, local, statutory or common law, or any other law, rule or regulation, including both known or unknown claims, present or future, that were asserted or could have been asserted in any forum by any or all of the Class Members, or any one of them, or the successors or assigns of them, or any one of them, against Released Parties, which arise out of or relate in any way to, any of the allegations, transactions, facts, events, matters, occurrences, acts, representations or omissions involved, during the year 2003.

7. "Released Parties" means Associates, their parent companies, affiliates, subsidiaries, divisions, predecessors, successors, representatives, assignees, present and former officers, directors, employees, shareholders, insurers, underwriters, attorneys and agents.

8. "Opt-out" means any Class Member who elects to withdraw from the Agreement, within such proper time and on such proper terms as the Court shall order as set forth in its Preliminary Approval Order, attached hereto as Exhibit A.

9. "Settlement Fund" means the consideration in the amount of Ninety-Thousand Dollars (\$90,000) as further set forth in paragraph C(2)-(3) of this Agreement.

**B. RECITALS**

1. WHEREAS, on August 9, 2004, Plaintiff filed a complaint against Associates in the United States District Court for the Eastern District of New York bearing the caption "Gerard Cerda, individually and on behalf of all persons similarly situated against Restaurant Associates, Inc., and RA Tennis Corp.", No. 04 CV 339 (the "Action"), which alleged various claims of discrimination in employment on the basis of race and national origins in violation of federal and New York State and City law; and

2. WHEREAS, on or about September 9, 2004, Associates served and filed an answer denying the allegations of the Complaint; and

3. WHEREAS, beginning February 28, 2005, the Settling Parties conducted substantial discovery, including exchange and review of documents, formulation of

interrogatories and submission of responses thereto, analysis of damages and participation in the deposition of Cerda; and

4. WHEREAS, on December 23, 2005, Plaintiff served upon Associates a motion for leave to file an amended complaint and a motion for class certification; and

5. WHEREAS, after extensive arms-length negotiations over many months, including multiple settlement conferences before Magistrate Judge Robert M. Levy, the parties hereto now wish to settle the Action, subject only to the approval of the Court; and

6. WHEREAS, Plaintiff seeks to represent a Settlement Class (as defined in paragraph A(1) above) and Associates agrees solely on the terms set forth herein that the Class should be certified for purposes of effectuating this Agreement. If this Settlement Agreement is not approved by the Court, the parties agree that Associates is not bound by any representation made in this Agreement regarding the Class and the parties agree that Associates is only agreeing to Class certification for the purpose of settlement. Furthermore, if any part of this Agreement is later reversed by the Court of Appeals, the Parties agree that Associates is not bound by any representation made in this Agreement; and

7. WHEREAS, Associates has denied and continues to deny all claims made with respect to the alleged facts or causes of action. Nevertheless, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settle the litigation, on the terms and conditions set forth in this Agreement, to avoid the burden,

expense, and uncertainty of continuing the litigation; to avoid the diversion of its resources and personnel required by continuing the litigation; and to put to rest all claims that have been brought or asserted in the litigation. and

8. WHEREAS, the attorneys for the Plaintiff have conducted a thorough study and investigation of the facts and the law relating to the claims asserted in the Action, have conducted thorough and broad discovery, and have concluded that, based upon the facts discovered, the legal theories available, the substantial benefits that Class Members will receive as a result of this Settlement and the risks and delays of further litigation, including the risk that the defenses of Defendant Associates might be deemed meritorious, the Settlement provided herein is fair, adequate and reasonable and in the best interests of the Plaintiff and the Class Members;

NOW, THEREFORE, the Settling Parties hereby agree as follows:

**C. TERMS AND CONDITIONS OF AGREEMENT**

1. In consideration of the payments set forth herein, and subject to the approval of the Court pursuant to Rule 23(e), Fed. R. Civ. Proc., Plaintiff agrees that the Action shall be dismissed with prejudice, and Plaintiff and each Class Member who does not timely opt out, on behalf of himself or herself, his or her heirs, executors, administrators, successors and assigns, hereby release and forever discharge the Released Parties from the Settled Claims. Each Class Member who does not timely opt out as explained below in Paragraph D(6) hereby covenants and agrees that he or she

shall not hereafter assert any claim, suit, demand or cause of action, whether individually or on behalf of a class, against the Released Parties based in whole or in part upon any of the Settled Claims. This Release and Covenant Not to Sue applies to all Class Members who do not validly and timely opt out, regardless of whether they file Claim Forms.

2. In consideration for the release and dismissal of the Settled Claims, Associates shall, within 30 days after entry by the Court of the Final Order of Approval, make payment to each Claimant of the amount set forth in paragraph C(3) hereof.

3. (a) Subject to the provisions of subparagraphs (b) and (c) hereof, the Settlement Fund of \$90,000 shall be distributed in equal shares to all Claimants.

(b) In the event that fewer than seventy-five individuals file Claim Forms, the amount paid to each Claimant shall be limited to one-thousand-two-hundred dollars (\$1,200) per Claimant.

(c) In the event that the limitation set forth in subparagraph 3(b) becomes operative, the balance remaining in the Settlement Fund after payment to the Claimants shall be donated to such charitable institution(s), duly recognized under section 501(c)(3) of the Internal Revenue Code, as shall have been agreed to by the Settling Parties prior to the entry of the Final Order of Approval. Associates only will receive the benefit of this donation.

4. In recognition of Cerda's effort and commitment in seeking redress for the Class Members of the Claims being settled by this Agreement, Cerda shall, within 30

days of the entry of the Final Order of Approval, receive payment of seven-thousand-five-hundred dollars (\$7,500) from Associates. Said payment shall be in addition to Associates' payment into the Settlement Fund. In accepting such payment, Cerda shall be deemed to waive his entitlement to participate in the distribution of shares of the Settlement Fund.

5. The Settling Parties agree that (a) all sums paid to Claimants hereunder shall be subject to deduction of federal Social Security and Medicare taxes imposed upon employees; and (b) Associates shall also withhold Claimants' federal, New York State, and City income taxes. Associates shall issue to each Claimant an appropriate Form W-2 respecting the settlement payment made to said Claimant. The Settling Parties agree to cooperate with each other and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this subparagraph. It is understood and agreed that Associates has not made any representations regarding any issue of tax liability on the distribution of the settlement funds.

**D. CLASS CERTIFICATION, JUDICIAL APPROVAL AND ADMINISTRATION**

1. Plaintiff and Associates agree that contemporaneously with the execution of this Agreement, they will jointly file (a) a consent, pursuant to 28 U.S.C. § 636(c), that all proceedings in this Action, including entry of judgment, shall be conducted by a United States Magistrate Judge; (b) a motion, pursuant to Rule 23(b)(3), Fed. R. Civ. Proc., for certification of the class defined in Subparagraph A(1) of this Agreement as a settlement class; and (c) a motion for preliminary approval of Settlement and for

approval of the Class Notice.

2. The Class shall be notified of the relevant terms of this Agreement by Class Notice (Exhibit B) pursuant to Rule 23(c)(2), Fed. R. Civ. Proc., substantially in the form of and in the manner directed by the Preliminary Approval Order. Class Notices shall be sent to all Class Members whose current addresses can be ascertained through reasonable efforts, which shall consist of using addresses previously provided by Class Members to Associates and by re-mailing, one time, any returned Notices to the most recent addresses available through the United States Postal Service national change-of-address system. The Notices shall be mailed by Associates by first-class mail within thirty (30) days of entry of the preliminary approval order and shall inform Class Members of the settlement and their right to object or opt out and of the Final Hearing Date.

3. Associates shall pay (in addition to and not out of the Settlement Fund) all costs associated with dissemination of the Class Notice and the administration of the Settlement Fund, and shall prepare and file an affidavit and class list as to the mailing of notices 10 days prior to the Final Approval Hearing.

4. The Settling Parties agree that, to the degree reasonably feasible, the sending and receipt of Class Notices of Settlement payments and of other communications with Class Members, may be handled by the regular staff of Associates, subject to cooperation with and review by Plaintiff's attorneys. Associates will prepare a list of class members to whom notice will be sent, and shall provide



plaintiff's attorneys with continued access to the 2002-2004 employment applications to permit plaintiff's attorneys to assist in locating class members.

5. Parties shall employ reasonable procedures to verify membership in the Class consistent with the intent of compensating as many members thereof as possible. All issues concerning eligibility for Class membership shall be resolved by agreement between counsel for the Settling Parties, or if they cannot agree, by referral to the Court.

6. Class Members who wish to object to the proposed settlement must do so in writing. Written objections shall be mailed to Class Counsel, Eugene A. Gaer, 420 Lexington Avenue, Suite 2620, New York, New York 10170 and must be postmarked on or before twenty-one (21) days before the Final Hearing Date. Class Counsel shall stamp the date received on the original of any objection it receives and serve copies of the objections on Associates counsel no later than five (5) business days after receipt thereof and shall file the date stamped originals of any objections with the Clerk of Court no later than five (5) business days prior to the date of the Final Approval hearing.

7. In accordance with the requirements of Federal Rule of Civil Procedure 23(b)(3), any Class Member may request exclusion from the class. Class Members who wish to exclude themselves from membership in the Settlement Class must do so in writing by filing with Class Counsel, Eugene Gaer, 420 Lexington Avenue, Suite 2620, New York, New York 10170, a signed, notarized, and dated "Opt-Out" statement, stating that he/she wishes to be excluded from the Settlement Class. Written "Opt-Out" statements must be postmarked on or before twenty-one (21) days before the Final

Hearing Date. Class Counsel shall stamp the date received on the original of any "Opt-Out" statement it receives and serve copies of the "Opt-Out" statements on Associates' counsel no later than five (5) business days after receipt thereof and shall file the date-stamped originals of any "Opt-Out" statements with the Clerk of Court no later than five (5) business days prior to the date of the Final Approval hearing. Only those Class Members who request exclusion in the time and manner set forth herein shall be excluded from the Class and shall have no right to file claims under this Agreement.

8. Within 30 days after entry of the order of Final Approval, Associates shall pay fifty-thousand dollars (\$50,000) to Plaintiff's attorneys in full payment of said attorneys' fees, expenses and costs. Associates will provide Plaintiff's counsel with a 1099. Upon receipt of said payment, Plaintiff's attorneys shall have no further entitlement to any payment by Associates, Cerda or any Class Member respecting services performed with respect to this Action. Said payment by Associates shall be in addition to, and not a part of, any Settlement payment herein.

9. Plaintiff, Associates and the Class Members submit to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Agreement.

10. This Agreement may be executed in two or more counterparts, which may be facsimile counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same Agreement.

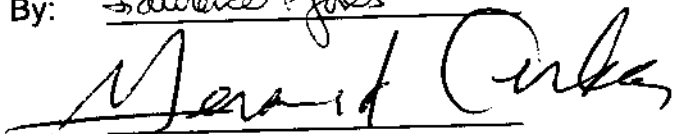
**E. MISCELLANEOUS PROVISIONS**

1. Class Counsel represents that they are not currently representing any concession worker other than Cerda who worked or attempted to work at the US Open for the years 2001, 2002, 2004, or 2005.
2. Cerda agrees not to disparage Associates, in any way. Cerda agrees not to make any critical, negative, derogatory or disparaging statement, whether written or oral, about the Released Parties or their respective officers, directors, employees or representatives including, but not limited to, comments about any of its services, business or employment practices. However nothing contained herein shall prohibit Cerda, as part of the collective bargaining process from stating his opinion on any offer by Associates or response by Local 100, provided such comments do not include any derogatory or disparaging statements that in any way relate to alleged discrimination, unfair treatment or the allegations in the action.
3. Cerda and his attorneys agree not to seek, initiate, or solicit any further publicity regarding this Settlement or any aspect of the lawsuit. If any person from any newspaper, television broadcast, or any written publication asks Cerda or his attorneys about the lawsuit, they will simply say that the lawsuit was resolved.
4. If any deadline described in this Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be extended to the same time on the next business day.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be  
duly executed as of the date first above written.

RESTAURANT ASSOCIATES, INC. and  
RA TENNIS CORP.

By: Laurence Jones



GERARD CERDA



EUGENE A. GAER  
Co-Counsel for Plaintiff  
420 Lexington Avenue,  
Suite 2620  
New York, New York 10170  
(212) 949-9696



ROGER J. BERNSTEIN  
Co-Counsel for Plaintiff  
331 Madison Ave., 15<sup>th</sup> Floor  
New York, New York 10017  
(212) 338-9188

MCGUIRE WOODS LLP

By: Jonathan Harmon

JONATHAN P. HARMON  
Attorneys for Defendants  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
(804) 775-1000

Exhibit A -- Preliminary Approval Order:

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

GERARD CERDA, individually and on	)
behalf of all persons similarly situated,	)
	)
Plaintiff,	)
	)
v.	)
	)
RESTAURANT ASSOCIATES, INC., and	)
RA TENNIS CORP.,	)
	)
Defendants.	)

No. 04 CV 3394  
(DLI)(RML)

**ORDER WITH RESPECT TO PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT,  
AND NOTICE AND HEARING  
ON PROPOSED CLASS ACTION SETTLEMENT**

Plaintiff having moved for an Order (1) preliminarily approving the proposed settlement (the "Settlement") provided for in the Agreement of Settlement, dated March \_\_, 2006; and (2) approving the proposed form of Notice of Pendency of Class Action and of Proposed Settlement (the "Notice"), and the parties to the Agreement of Settlement having consented to the jurisdiction of the Magistrate Judge, pursuant to 28 U.S.C. § 636(c), and to entry of this Order.

IT IS HEREBY ORDERED THAT:

- I. The Settlement, as set forth in the Agreement of Settlement, is preliminarily approved, the Court preliminarily finding and concluding that the Settlement is fair, reasonable, and adequate and in the best interest of the Class. To the extent not

otherwise specifically defined in this Order, the Court also adopts the terms defined in the Agreement of Settlement for purposes of this Order.

The form of Notice and Claim Form substantially in the form of Exhibit B to the Agreement of Settlement, including the dates set forth therein for filing claim forms, exclusion requests, and objections, is hereby approved, and it is determined that mailing by first-class mail of such Notices to the Plaintiffs and members of the Class whose addresses are known within thirty (30) business days of the date of this Order meets the requirements of Rule 23, Fed. R. Civ. Proc., and of due process, that it constitutes the best notice practicable under the circumstances, and that it shall constitute due and sufficient notice to all persons entitled thereto. The Notices shall bear the return address of Plaintiff's counsel.

II. A hearing (the "Final Settlement Hearing") shall be held before the Honorable Robert M. Levy on May 31, 2006 at 11:00 am/pm in Courtroom 11B of the United States District Court for the Eastern District of New York, 225 Cadman Plaza, Brooklyn, New York, to determine: (a) whether the Settlement is fair, reasonable and adequate and should be finally approved by the Court; and (b) whether judgment should be entered dismissing this action against defendants Restaurant Associates, Inc., and RA Tennis Corp. with prejudice and without costs, under the terms set forth in the Agreement of Settlement.

III. Any plaintiff or member of the Class who does not file a timely and valid request for exclusion from the Class (and thus the Settlement) who objects to the Settlement, or who otherwise wishes to be heard with respect to any of the foregoing,

must do so either by appearing personally (or by counsel) at the Final Settlement Hearing and/or by filing a written objection with the Clerk of the Court and counsel for all parties. Any person wishing to object in person or by counsel at the Final Settlement Hearing must provide a written Notice of Intent to Appear and Object setting forth: (a) the objecting person's name and signature; (b) a statement evidencing the objecting person's status as a member of the Class; and (c) a statement of such person's intention to appear at the Final Settlement Hearing, either personally or by counsel. Any person wishing to file a written objection must provide a written Notice of Objection setting forth: (a) the objecting person's name and signature; (b) a statement evidencing the objecting person's status as a member of the Class; and (c) a statement of the specific nature and grounds for any objection. All Notices of Intent to Appear and Object and all Notices of Objection must be filed with the Clerk of the Court (United States District Court, Eastern District of New York) at least twenty-one (21) days prior to the date of the Final Settlement Hearing, and copies must be provided to counsel for the parties at the following addresses:

Eugene A. Gaer, Esq.  
420 Lexington Avenue, Suite 2620  
New York, New York 10170

Jonathan P. Harmon, Esq.  
McGuire Woods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219

IV. Any person who fails to object in the manner prescribed in the immediately preceding paragraph shall be deemed to have waived any such objections that person

may have and shall be barred from raising such objections in this or any other action or proceeding relating to the settlement. No claim shall be allowed unless the Class Member mails submits the completed and executed Claim Form annexed to the Notice of Class Action and of Proposed Settlement 21 days before the Final Settlement Hearing date, provided, however, that Class Counsel may subsequently move the Court for approval to include late-filed claims in the plan of distribution.

V. The Court may adjourn or continue the Final Settlement Hearing, or any further adjournment or continue thereof, without further notice other than an announcement at such final Settlement Hearing or at any adjournment or continuance thereof, and may approve the Settlement with modifications consented to or by the parties to the Agreement of Settlement without further notice.

VI. Pending the Final Settlement Hearing, all proceedings in this Action, other than proceedings necessary to carry out and enforce the terms and condition of the Agreement of Settlement shall be stayed.

Dated: Brooklyn, New York  
March 23, 2006

SO ORDERED:

  
UNITED STATES MAGISTRATE JUDGE



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

GERARD CERDA, individually and on )  
behalf of all persons similarly situated, )  
 )  
Plaintiff, )  
vs. )  
 )  
RESTAURANT ASSOCIATES, INC. )  
and RA TENNIS CORP. )  
 )  
Defendants. )

No. 04 CV 3394 (DI)

**NOTICE OF CLASS ACTION  
AND OF PROPOSED SETTLEMENT**

**If you worked as a concession stand worker at the US OPEN in 2003, then you can get a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- The settlement will provide a Settlement Fund from Restaurant Associates for non-white concession stand workers who worked at the US Open in 2003.
- The settlement resolves a lawsuit claiming that Restaurant Associates discriminated against non-white concession stand workers who worked at the US Open in 2003.
- Your legal rights are affected whether you act or not. Read this notice carefully.
- Your legal rights and options – **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Payment will be made if the Court approves the settlement. Please be patient.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Restaurant Associates, Inc. about the legal claims in this case.
<b>OBJECT</b>	Write to the Court if you do not like the Settlement.
<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement.
<b>DO NOTHING</b>	Get no payment. Give up your rights in this matter.

**SUMMARY NOTICE**

**Statement of Plaintiffs' Recovery**

Pursuant to the Settlement described herein, a Settlement Fund has been established. Plaintiffs estimate that there were between one-hundred-eighty and two-hundred-thirty non-white employees working as concession stand workers at the US Open in 2003. The amount each employee will receive will depend on how many non-white employees participate in this settlement by returning a claim form. Each class member who returns a claim form will receive between approximately \$400 and \$1,200 from this Settlement Fund.

**Statement of Potential Outcome of Case**

The parties disagree on both liability and damages and do not agree on the amount of damages that would be recoverable if Plaintiff were to have prevailed on each claim alleged. The Defendants deny that they are liable to the Plaintiff or the Class and deny that Plaintiff or the Class has suffered any damages.

**Statement of Attorneys' Fees and Costs Sought**

Counsel for the class will receive payment of \$50,000 for all counsel fees and costs they have incurred.

### **Further Information**

Further information regarding the Action and this Notice may be obtained by contacting counsel for the Plaintiffs: Eugene A. Gaer, 420 Lexington Avenue, Suite 2620 New York, New York 10170 (212) 949-9696 or Roger J. Bernstein, 331 Madison Ave., 15<sup>th</sup> Floor, New York, NY 10017 (212) 338 9188.

### **Reasons for the Settlement**

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved if class certification is not granted, or if the Court were to grant a motion by the defendants to dismiss the case, or if Plaintiff loses after a contested trial and likely appeals, possibly several years into the future. Plaintiff and his counsel believe the proposed Settlement is fair, reasonable, and adequate for the Class Members. Plaintiff and his counsel have reached this conclusion after considering, among other things, the strengths and weaknesses of the claims against Defendants, including Defendants' contention, among others, that some non-white employees earned more than white employees in 2003.

## **BASIC INFORMATION**

### **1. Why did I get this notice package?**

You worked as a concession stand worker at the US Open in 2003.

### **2. What is this lawsuit about?**

Plaintiff alleges that Defendants have unlawfully discriminated on the basis of national origin and race against persons hired to staff the refreshment facilities at the US Open tennis tournament held in August and September in Flushing Meadow Park, Queens, New York. Plaintiff alleges that Defendants discriminated against non-white employees by paying them less than the white persons employed at said refreshment facilities and by giving them less desirable assignments. Defendants deny that any discrimination occurred.

### **3. Why is this a class action?**

In a class action, one or more people called Class Representatives sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

#### **4. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the risks and cost of a trial, and the people involved will receive compensation. The Class Representative and his attorneys believe that the Settlement is best for all Class Members.

#### **5. How do I know if I am part of the Settlement?**

If you worked at the US Open as a concession stand worker in 2003 and are either non-white or your national origin is not the United States, then you are part of the settlement.

#### **6. What if I am not sure if I am included?**

If you are not sure whether you are included, you should file a claim form. Employment records will assist in determining whether you are included, and if necessary the Court will decide whether you are included.

### **THE SETTLEMENT BENEFITS — WHAT YOU GET**

#### **7. What does the Settlement provide?**

In exchange for the Settlement and dismissal of the Action, Defendant Restaurant Associates, Inc. has agreed to create a Settlement Fund to be divided among all Class Members who send in a valid Proof of Claim form. (If fewer than 75 Class Members submit claim forms, their individual recovery will be capped at \$1,200 and any funds not claimed will be paid to a charitable institution agreed upon by the parties.)

#### **8. How much will my payment be?**

Your share of the fund will depend on how many Class Members return the Proof of Claim forms. The Settlement Fund will be divided only among the Class Members who return Proof of Claim forms. Depending how many forms are returned, you will receive between approximately \$400 and \$1,200 (which will be subject to withholding for taxes).

#### **9. How can I get a payment?**

To qualify for a payment, you must send in a Proof of Claim form. A Proof of Claim form is being circulated with this Notice. Read the instructions carefully, fill out the Proof of Claim form, include all the documents the form asks for, sign it, and mail it postmarked no later than [twenty-one days prior to Final Settlement Hearing date set by Court].

**10. When would I get my payment?**

The Court will hold a hearing on [Final Settlement Hearing date], to decide whether to approve the Settlement. It also takes time for all the Proofs of Claim to be processed. Please be patient.

**11. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself, you are staying in the Class, and that means that, upon the "Effective Date," you will release all claims that you may have against Restaurant Associates, Inc. and RA Tennis Corp. arising out of your employment by them as a food vendor.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep the right to sue Restaurant Associates, Inc. and RA Tennis Corp. on your own about the legal issues in this case, then you must get out of the Settlement by filing a letter saying that you want to exclude yourself. See Para. 12.

**12. How do I get out of the proposed Settlement?**

To exclude yourself from the Settlement Class, you must send a letter by mail stating as follows: "I request exclusion from the Class in *Cerda et al. v. Restaurant Associates, Inc., et al., No. 04-3394.*" Be sure to include your name, address, telephone number, and your signature. You must mail your exclusion request postmarked no later than [twenty-one days prior to Final Settlement Hearing Date] to:

Eugene A. Gaer  
420 Lexington Avenue, Suite 2620  
New York, New York 10170

You cannot exclude yourself by telephone or by e-mail. If you ask to be excluded, you will not get any Settlement payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit.

**13. If I do not exclude myself, can I sue the Released Parties for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue Restaurant Associates, Inc. or RA Tennis Corp. and you accept this Settlement as a full and final compromise of any and all claims that you might have.

**14. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, do not send in a claim form to ask for any money from

the Settlement Fund in this case.

**THE LAWYERS REPRESENTING YOU**

**15. Do I have a lawyer in this case?**

The Court ordered that the law firms of Eugene A. Gaer, 420 Lexington Avenue, Suite 2620 New York, New York 10170 (212) 949-9696 or Roger J. Bernstein, 331 Madison Ave., 15<sup>th</sup> Floor, New York, NY 10017 (212) 338 9188 will represent Class Members. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

**16. How will the lawyers be paid?**

Counsel will receive a payment of \$50,000 for all fees and costs they have incurred.

**OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

**17. How do I tell the Court that I do not like the proposed Settlement?**

If you are a Class Member, you can object to the proposed Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed Settlement in *Cerda et al. v. Restaurant Associates, Inc., et al., No. 04-3394*. Be sure to include your name, address, telephone number, and your signature, and state the reasons why you object to the proposed Settlement. Mail the objection to each of the following addresses postmarked no later than [21 days before Final Settlement Hearing date]:

Eugene A. Gaer  
420 Lexington Avenue, Suite 2620  
New York, New York 10170

Jonathan P. Harmon  
McGuireWoods LLP  
901 East Cary Street  
Richmond, VA 23219

**18. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement. You can object only if you stay in the Class. Excluding

yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### **THE COURT'S SETTLEMENT FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

#### **19. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Settlement Fairness Hearing at 11:00 a.m. on <sup>May 31, 2006</sup> [Final Settlement Hearing Date], at the United States District Court for the Eastern District of New York, 225 Cadman Plaza, Room 11B, Brooklyn, NY. At this hearing the Court will consider whether the Settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the Settlement. The Court may change the date and time of the hearing. Thus, if you want to come to the hearing, you should check with the Court before coming to be sure that the date and/or time has not changed.

#### **20. Do I have to come to the hearing?**

No. Counsel for the Plaintiffs will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

#### **21. May I speak at the hearing?**

If you object to the Settlement, you may ask the Court for permission to speak at the Fairness Hearing.

### **IF YOU DO NOTHING**

#### **22. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement.

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### **GETTING MORE INFORMATION**

#### **24. Are there more details about the proposed Settlement?**

This notice summarizes the proposed Settlement. More details are in an Agreement of Settlement dated March \_\_, 2006 (the "Agreement"). You can get a copy of the Agreement by writing to Plaintiffs' Counsel, Eugene A. Gaer, Esq., 420 Lexington Avenue, Suite 2620, New York, New York 10170

#### **25. How do I get more information?**

For even more detailed information concerning the matters involved in this Action, reference is made to the other papers filed in the case, which may be inspected at the Office of the Clerk of the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY during regular business hours.

New York, NY  
March 15, 2006

BY ORDER OF THE U.S. DISTRICT COURT



**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

*Cerda et al. v. Restaurant Associates, Inc., et al.,  
No. 04-3394.*

**CLAIM FORM (2 PAGES)**

**Must be postmarked by [21 Days Before Final Settlement Hearing Date]**

**PART I: Identifying Information**

\_\_\_\_\_  
Your Name

\_\_\_\_\_  
Your Current Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Daytime Telephone No.

\_\_\_\_\_  
Facsimile Number (if available)

\_\_\_\_\_  
E-Mail Address (if available)

**PART II:**

Did you work at US Open as a food vendor in 2003: \_\_\_\_\_  
[Answer yes or no]

What stand or stands did you work at: \_\_\_\_\_

What is your race: \_\_\_\_\_

What is your national origin (country where you  
or your ancestors were born): \_\_\_\_\_

*Declaration:*

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct to the best of my knowledge information and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**MAIL TO:**

Eugene A. Gaer, Esq.  
420 Lexington Ave., Suite 2620  
New York, NY 10170

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