

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

DANA COHEN, JACK LEON, and JAMES  
MILLER, individually and on behalf of all  
others similarly situated;

Plaintiffs,

v.

UPMC PRESBYTERIAN SHADYSIDE;  
BOSTON MARKET CORPORATION;  
HOWARD'S TOWING AND RECOVERY,  
LLC; and HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION  
The Honorable Philip A. Ignelzi

No. GD-18-012332

**PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND FOR  
AUTHORIZATION OF CLASS  
NOTICE**

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Kelly K. Iverson  
(Pa. ID No. 307175)  
Elizabeth Pollock-Avery  
(Pa. ID No. 314841)  
**LYNCH CARPENTER LLP**  
1133 Penn Ave., 5th Floor  
Pittsburgh PA, 15222  
P: 412.322.9243  
Kelly@lcllp.com  
Elizabeth@lcllp.com

Joshua P. Ward  
(Pa. ID No. 320347)  
**J.P. WARD & ASSOCIATES, LLC**  
201 S. Highland Ave, #201  
Pittsburgh, PA 15206  
P: 412.545.3016  
jward@jpward.com

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

DANA COHEN, JACK LEON, and JAMES MILLER, individually and on behalf of all others similarly situated;

CIVIL DIVISION – CLASS ACTION  
The Honorable Philip A. Ignelzi

No. GD-18-012332

Plaintiffs,

v.

UPMC PRESBYTERIAN SHADYSIDE;  
BOSTON MARKET CORPORATION;  
HOWARD’S TOWING AND RECOVERY,  
LLC; and HOWARD SZUMINSKY,

Defendants.

**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND FOR AUTHORIZATION OF CLASS NOTICE**

Plaintiffs Dana Cohen, Jack Leon, and James Miller (collectively, “Plaintiffs”) respectfully move this Court for an order: (1) granting preliminary approval of the proposed Class Action Settlement Agreement and Release (“Agreement” or “SA”) between themselves and Defendants Boston Market Corporation (“Boston Market”); Howard’s Towing and Recovery, LLC; and Howard Szuminsky (collectively “Howard’s Towing”) (and together with Boston Market, “Defendants”) and (2) authorizing the dissemination of notice to the Class Members. In support of their motion, Plaintiffs state as follows:

1. Plaintiffs initiated this case against UPMC Presbyterian Shadyside and Howard’s Towing by way of class action complaint on September 24, 2018, alleging violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat. §§ 202-1, *et seq.*, the Pennsylvania Fair Credit Extension Uniformity Act (“PaFCEUA”), 73 Pa. Stat. §§ 2270.1, *et seq.*, and various common law causes of action. (Doc. 1).

2. Plaintiffs then filed the operative Amended Class Action Complaint on February 5, 2019, to add Boston Market as a new defendant. (Doc. 11).

3. Defendants and UPMC Presbyterian Shadyside thereafter filed preliminary objections which were subsequently fully briefed and argued by the parties, and later overruled by the Court. (Doc. 15, 18, & 19).

4. Defendants answered the Amended Complaint on November 11 and December 12, 2019, denying Plaintiffs' asserted claims. (Doc. 23 & 25).

5. Thereafter, the Parties agreed to a voluntary discontinuance as to UPMC Presbyterian Shadyside on January 29, 2020. (Doc. 29).

6. On May 11, 2020, Plaintiffs filed their Motion for Class Certification and on June 16, 2020, the Court entered an Order permitting the Parties to conduct discovery in advance of the class certification hearing. (Doc. 31 & 34).

7. Following discovery, Plaintiffs later filed their Renewed Motion for Class Certification on December 21, 2020. (Doc. 36).

8. After Plaintiffs' Motion for Class Certification was briefed and argued by the parties, the Court granted Plaintiffs' Motion for Class Certification on June 29, 2021, directing the matter to as a class action. (Doc. 45). The Court defined the Class and Subclass as follows:

Class:

All individuals who were nonconsensually towed from the Parking Lot by Howard's Towing within the applicable statutes of limitation.

Subclass:

All individuals who were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code §§ 525.05 for release or return of any passenger cars, light trucks, motorcycles, and scooters that were nonconsensually towed from the Parking Lot by Howard's Towing within the applicable statutes of limitation.

9. By the same Order, the Court deemed Plaintiffs as proper representatives of the Class and appointed Kelly K. Iverson of Lynch Carpenter, LLP and Joshua Ward of J.P. Ward and Associates, LLC as Class Counsel.

10. The Parties participated in a conciliation session on February 8, 2022, before the Honorable Philip Ignelzi. While the Parties were unable to reach an agreement in principle that day, they made substantial progress in resolving the matter and agreed to engage in a second mediation session.

11. The Parties then participated in a second conciliation session on February 25, 2022, before Judge Ignelzi. While the Parties were unable to reach an agreement in principle that day, they made substantial progress to resolving the matter and agreed to engage in a third conciliation session.

12. The Parties then participated in a third conciliation session which resulted in a settlement in principle, with the parties reaching an agreement on the core terms of their proposed settlement, which if approved by the Court, will resolve all claims in the litigation.

13. After reaching a settlement in principle, the Parties began negotiating and drafting the written terms of their agreement, which resulted in the completion and execution of a Proposed Class Action Settlement Agreement and Release, which is attached hereto as **Exhibit A**.

14. The Settlement will provide substantial benefits to a class of roughly 144 individuals. The Settlement benefits include: (1) Defendants' payment of \$31,800.00 to establish a Settlement Fund for a direct and automatic monetary distribution to all Class Members; (2) non-monetary relief requiring Boston Market to place in the Parking Lot a sign advertising to potential parkers that they may be towed if they are not patronizing an approved retailer and advertising the tow fee charged will not exceed the amount permitted by 5 Pittsburgh Code §§ 525.05; (3) up to

\$1,500.00 in Service Awards to each of the named Plaintiffs to the extent approved by the Court; (4) up to \$34,800.00 for Class Counsel's attorneys' fees and costs, to the extent approved by the Court; and (5) Boston Market's payment of the costs associated with notice and settlement administration.

15. Under the agreement, Class Members who do not timely and validity exclude themselves will automatically receive a *pro rata* distribution of the Settlement Fund. Based on the number of Class Members, it is estimated that the distributions will be \$215 per Class Member, a near full recovery of the alleged tow fees paid to Defendants.

16. Plaintiffs request approval of the proposed Settlement on the grounds that it falls within the range of reasonableness and that approval of this proposal will secure a monetary recovery for a significant number of individuals after four years of litigation.

17. Plaintiffs request approval of the Parties' proposed notice program, which contemplates individual notice to each Class Member to the extent possible via email and U.S. mail. The Parties' proposed notice clearly informs Class Members of the material terms of the Settlement and the forms of relief available to Class Members; Class Members' estimated distribution; and the dates by which they must act. The Parties will also cause the creation of a settlement website providing Class Members with comprehensive information about the Settlement.

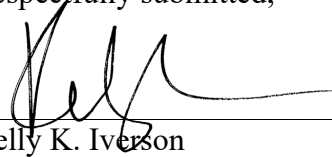
18. Plaintiffs request the approval of Analytics Consulting, LLC as the settlement administrator to provide notice and administration services.

19. In further support of their motion, Plaintiffs refer the Court to their attached Brief.

WHEREFORE, Plaintiffs respectfully request that the Court: (1) preliminarily approve the proposed Settlement and (2) approve the proposed notice program.

Dated: July 3, 2023

Respectfully submitted,



---

Kelly K. Iverson

(Pa. ID No. 307175)

Elizabeth Pollock-Avery

(Pa. ID No. 314841)

**LYNCH CARPENTER LLP**

1133 Penn Ave., 5th Floor

Pittsburgh PA, 15222

P: 412.322.9243

Kelly@lcllp.com

Elizabeth@lcllp.com

Joshua P. Ward

(Pa. ID No. 320347)

**J.P. WARD & ASSOCIATES, LLC**

201 S. Highland Ave, #201

Pittsburgh, PA 15206

P: 412.545.3016

jward@jpward.com

*Attorneys for Plaintiffs and the Class*

# Exhibit A

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

DANA COHEN, JACK LEON, and JAMES  
MILLER, individually and on behalf of all  
others similarly situated;

Plaintiffs,

v.

UPMC PRESBYTERIAN SHADYSIDE;  
BOSTON MARKET CORPORATION;  
HOWARD'S TOWING AND RECOVERY,  
LLC; and HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION

NO. GD-18-012332

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**



**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

Subject to approval by the Court of Common Pleas of Allegheny County, this Class Action Settlement Agreement and Release (“Agreement” or “Settlement”) dated as the last of the signatures below, is entered into by and between Plaintiffs Dana Cohen, Jack Leon, and James Miller (“Class Representatives” or “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendants Boston Market Corporation, (“Boston Market”) and Howard’s Towing and Recovery, LLC and Howard Szuminsky (collectively “Howard’s Towing”) (and together with Boston Market, “Defendants”) in the matter captioned *Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similarly situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard’s Towing and Recovery, LLC, and Howard Szuminsky*, GD-18-012332, in the Court of Common Pleas of Allegheny County, Pennsylvania (the “Litigation”). Class Representatives and Defendants are collectively referred to herein as the “Parties.”

**RECITALS**

**WHEREAS**, on September 24, 2018, Class Representatives initiated this Litigation by filing a Class Action Complaint against UPMC Presbyterian Shadyside, Howard’s Towing and Recovery, LLC, and Howard Szuminsky following non-consensual tows from the parking lot located at 5200 Baum Blvd., Pittsburgh, PA 15224 (the “Parking Lot”), exceeding the maximum allowable as set forth under the Pittsburgh Code of Ordinances and Pennsylvania Law;

**WHEREAS**, on February 5, 2019, the Class Representatives filed an Amended Complaint to add the Boston Market, as a new defendant;

**WHEREAS**, Boston Market and Howard’s Towing, through their respective counsel, filed Answers to the Amended Complaint and included Cross-Claims against each other;

**WHEREAS**, on January 29, 2020, all parties to the Litigation stipulated to the dismissal of UPMC Presbyterian Shadyside, based on the information then known to those parties concerning the towing services provided by Howard’s Towing, with respect to the Parking Lot;

**WHEREAS**, Class Representatives allege, that as a result of the non-consensual tows from the Parking Lot, Defendants violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 Pa. Stat § 202-1, *et. seq.*, the Pennsylvania Fair Credit Extension Uniformity Act (“PaFCEUA”), 73 Pa. Stat. § 2270.1, *et seq.*, and various common law causes of action;

**WHEREAS**, Defendants thereafter filed Preliminary Objections to the Class Representatives’ Amended Complaint, which were subsequently fully briefed and argued by the Parties, and later overruled by the Court;

**WHEREAS**, on May 11, 2020, Class Representatives filed a Motion for Class Certification and Proposed Order seeking appointment as Class Representatives on behalf of the following Class:

All owners or operators whose passenger cars, light trucks, motorcycles, and scooters were non-consensually towed from the Parking Lot by Howard's Towing within the applicable statutes of limitation, and who, as a result were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code §§ 525.05.

**WHEREAS**, on June 16, 2020, the Court entered an Order permitting the Parties to conduct discovery in advance of the class certification hearing;

**WHEREAS**, following discovery, on December 21, 2020, Class Representatives filed a Renewed Motion for Class Certification and Proposed Order;

**WHEREAS**, after the Parties submitted briefs in support of their respective positions, the Court held a hearing to consider Class Representatives' Renewed Motion for Class Certification;

**WHEREAS**, on June 29, 2021, the Court issued an Order granting the Class Representatives' Renewed Motion for Class Certification, directing that the matter to proceed as a Class Action, and defined the Class as outlined in above;

**WHEREAS**, by that same Order, Plaintiffs Dana Cohen, Jack Leon, and James Miller were deemed proper representatives of the Class, and Kelly K. Iverson of Lynch Carpenter, LLP and Joshua Ward of J.P. Ward and Associates, LLC, were appointed as Class Counsel;

**WHEREAS**, thereafter, on February 8, 2022, Defendants and the Class Representatives commenced settlement discussions, which culminated in the Parties participating in a mediation conference overseen by the Honorable Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania. While the Parties were unable to reach an agreement in principal that day, they made substantial progress towards resolving the matter and agreed to engaged in a second mediation session;

**WHEREAS**, on February 25, 2022, the Parties engaged in a second mediation conference overseen by the Honorable Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania. While the Parties were again unable to reach an agreement in principal during the second mediation session, they made substantial progress to resolving the matter and agreed to engaged in a third mediation session;

**WHEREAS**, on April 19, 2022, the Parties engaged in a third mediation conference overseen by the Honorable Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania;

**WHEREAS**, during the third mediation session, the Parties reached an agreement regarding the material terms of a settlement, which, if approved by the Court, will resolve all claims against Defendants in the Litigation. Thereafter, the Parties drafted this Agreement;

**WHEREAS**, this Agreement resulted from good faith, arm's-length settlement negotiations, including multiple rounds of offers, demands, and counteroffers among counsel of the Parties, and a supervised mediation with the Honorable Philip A. Ignelzi;

**WHEREAS**, Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in the Agreement and how best to serve the interests of the Class. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of the Litigation, and the substantial benefits received by the Class pursuant to this Agreement, that a settlement with Defendants on the terms set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Class;

**WHEREAS**, Defendants deny any wrongdoing whatsoever, and this Agreement shall in no event be construed or deemed to be evidence in any other litigation, including but not limited to as an admission or concession on the part of Defendants with respect to any claim of fault or liability or wrongdoing or damages whatsoever, any infirmity in the defense Defendants asserted or would assert, or the Plaintiffs' ability to carry their burden of proof in the Litigation. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation Defendants have agreed to settle the Litigation on the terms as set forth in this Agreement, subject to Court approval; and

**WHEREAS**, the Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to all released claims of the Class Representatives and Participating Class Members (as defined below). The Parties intend this Agreement to bind the Class Representatives, Defendants, and all Class Members that do not timely and validly exclude themselves from the Settlement.

**NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Litigation (including the Cross-Claims) be settled, compromised, and dismissed on the merits and with prejudice with respect to Defendants, subject to preliminary and final Court approval, as required by Pa. R. Civ. P. 1714, on the following terms and conditions:

## **1. DEFINITIONS**

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1** "Agreement" means this agreement and the attached exhibits hereto, which sets forth all material terms and conditions of the Settlement between the Parties, and which is subject to Court approval.
- 1.2** "Check Cashing Period" means the time Participating Class Members have to negotiate their Settlement Checks. This period starts on the day the Settlement Administrator issues the Settlement Checks and runs for the next one-hundred twenty (120) days. However, the Settlement Administrator is authorized to reissue an expired, unredeemed, lost, destroyed,

or never received Settlement Check, upon request of a Class Member, if such request is made within one-hundred eighty (180) days from the start of the Check Cashing Period.<sup>1</sup>

- 1.3** “Class List” means a manipulable-electronic list (*i.e.*, in Excel format) of all Class Members’ names, Last Known Addresses, personal e-mail addresses and/or telephone numbers, driver’s license numbers, license plate numbers, and vehicle identification numbers (“VIN”) that were maintained in Howard’s TowBook System during the Relevant Period.
- 1.4** “Class Member” means “all individuals who were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code §§ 525.05 for release or return of any passenger cars, light trucks, motorcycles, and scooters that were nonconsensually towed from the Parking Lot by Howard’s Towing within the applicable statutes of limitation.”
- 1.5** “Class Payment Amount” means the amount of thirty-one thousand eight hundred dollars and zero cents (\$31,800.00), which will be used to pay Class Members’ Settlement Checks. Boston Market will contribute twenty-eight thousand eight hundred dollars and zero cents (\$28,800.00) towards the Class Payment Amount, and Howard’s Towing will contribute three thousand dollars and zero cents (\$3,000.00) towards the Class Payment Amount. The Class Payment Amount does not include the Settlement Administration Costs, attorneys’ fees, costs, and expenses or the Service Awards.
- 1.6** “Class Representatives” or “Plaintiffs” mean Dana Cohen, Jack Leon, and James Miller.
- 1.7** “Class Representatives’ Released Claims” means, with respect to the Class Representatives, in their individual capacity, as opposed to their representative capacity, any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, which either may have or claim to have against Defendants and/or any of the Releasees which occurred on or before the date of this Agreement. The Release contained in this paragraph applies without limitation to all Releasees. This Release specifically includes but is not limited to claims alleged in the Litigation, compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTCPL”), 73 P.S. § 201-1 *et seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort arising or accruing during the Relevant Period, that they have or may have, whether known or unknown, against Defendants and/or the Releasees.
- 1.8** “Court” means the Court of Common Pleas of Allegheny County, Pennsylvania.

---

<sup>1</sup> All time periods provided by this Agreement are stated in calendar days, not business days, unless otherwise specifically identified.

- 1.9** “Cross Claimants’ Release” means full releases between Boston Market and Howard’s Towing, that includes any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, which Boston Market and Howard’s Towing have alleged against each other in the Litigation or that may arise out of the cross-claim allegations or within the Complaint which occurred on or before the date of this Agreement.
- 1.10** “Defendants’ Counsel” means The Lynch Law Group, on behalf of Boston Market, and Summers, McDonnell, Hudock, Guthrie & Rauch, P.C., on behalf of Howard’s Towing.
- 1.11** “Effective Date” of this Agreement means the last date by which all of the following have occurred:
- i. the Parties have executed the Agreement;
  - ii. the Parties have submitted to the Court and the Court has entered the following: (a) Preliminary Approval Order and (b) Final Approval Order and Judgment; and
  - iii. the Final Approval Order and Judgment becomes final and is no longer subject to appeal or review.
- 1.12** “Final Approval Hearing” means the hearing to be held after notice has been provided to the Class Members, to determine whether the Settlement should obtain final approval.
- 1.13** “Final Approval Order and Judgment” means an order signed and entered by the Court, which approves this Agreement and dismisses the Litigation (including the Cross-Claims), in a form substantially similar to the Stipulation and Proposed Order of Dismissal, attached as **Exhibit 1**. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order and Judgment includes all such orders.
- 1.14** “Howard’s TowBook System” means the information from Howard’s Towing’s business records detailing the information regarding collected for each tow, including but not limited to an individual’s name, address, phone numbers, driver’s license number, license plate number, and vehicle’s VIN.
- 1.15** “Individual Settlement Amount” means each Class Member’s proportionate share of the Settlement Fund, calculated pursuant to Section 3.5 of this Agreement.
- 1.16** “Last Known Address” means the most recently recorded personal mailing address for a Class Member as shown in Howard’s TowBook System, to the extent available.
- 1.17** “Litigation” means the lawsuit entitled *Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similar situated v. UPMC Presbyterian ShadySide,*

*Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky*, docketed at GD-18-012332.

- 1.18** “Objection Date” means the sixty (60) day period from which the Settlement Administrator first mails and e-mails Settlement Notices to any of the Class Members and the date by which a Class Member must file objections, if any, with the Clerk of the Court and serve objections to the Settlement Administrator and the Parties.
- 1.19** “Opt Out Period” means the sixty (60) day period beginning immediately after the Settlement Administrator first mails and e-mails Settlement Notices to any of the Class Members.
- 1.20** “Participating Class Member” means each Class Member who has not timely and properly exclude themselves from the Settlement.
- 1.21** “Participating Class Member’s Released Claims” means any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, which the Participating Class Member may have or claim to have against Defendants and/or any of the Releasees which occurred on or before the date of this Agreement. The Release contained in this paragraph applies without limitation to all Releasees. This Release is limited to the claims alleged in the Litigation, including any compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-1 *et seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort arising or accruing during the Relevant Period, that they have or may have, whether known or unknown, against the Releasees that arose out of, or in connection with the claims or facts alleged or set forth in the Litigation.
- 1.22** “Parties” collectively means Plaintiffs and Boston Market Corporation, Howard’s Towing and Recovery, LLC, and Howard Szuminsky.
- 1.23** “Plaintiffs’ Counsel” or “Class Counsel” means:
- |                           |                           |
|---------------------------|---------------------------|
| Kelly K. Iverson          | Joshua P. Ward            |
| Elizabeth Pollock Avery   | J.P. Ward & Associates    |
| Lynch Carpenter LLP       | 201 S. Highland Ave, #201 |
| 1133 Penn Ave., 5th Floor | Pittsburgh, PA 15206      |
| Pittsburgh PA, 15222      | P: 412.545.3016           |
| P: 412.322.9243           | jward@jpward.com          |
| Kelly@lcllp.com           |                           |
| Elizabeth@lcllp.com       |                           |
- 1.24** “Preliminary Approval Order” means the order preliminarily approving the Settlement and, among other things, ordering that notice be provided to the Class Members, and in the form

of, or materially in the form of, the proposed Preliminary Approval Order attached hereto as **Exhibit 2**.

- 1.25** “Releasing Parties” means the Class Representatives and all Participating Class Members, and each of their assigns, beneficiaries, estates, heirs, and the Class Representatives’ counsel of record in this Litigation.
- 1.26** “Releasees” means Defendants and their officers, directors, agents, successors, predecessors, affiliates, parents, and subsidiaries.
- 1.27** “Relevant Period” is from September 24, 2012 through June 29, 2018.
- 1.28** “Service Award” means payments to Plaintiffs as compensation for their involvement in this Litigation and serve on behalf of the Class Members. Each Service Award shall not exceed one thousand five hundred dollars and zero cents (\$1,500.00) and collectively shall not exceed four thousand five hundred dollars and zero cents (\$4,500.00).
- 1.29** “Settlement” means the settlement between the Parties embodied and contained in this Agreement.
- 1.30** “Settlement Administration Costs” means all costs associated with providing notice and issuing payment to the Class Members, inclusive of all costs required to carry out the duties and responsibilities outlined in Section 2 and 3.5 below. The Settlement Administration Costs are to be paid separately by Boston Market.
- 1.31** “Settlement Administrator” means Analytics Consulting LLC (“Analytics”).
- 1.32** “Settlement Check” means the check issued to each Participating Class Member for his or her proportionate share of the Settlement Fund calculated in accordance with this Agreement.
- 1.33** “Settlement Fund” means the account established by the Settlement Administrator from the Class Payment Amount paid by Defendants. The Settlement Fund will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s orders. The Settlement Fund, as described in Section 3.1 below, is intended to be a “qualified settlement” fund within the meaning of Internal Revenue Code § 1468B and Treasury Regulation § 1.468B-1. Interest, if any, earned on any monies in the Settlement Fund will become part of the Settlement Fund.
- 1.34** “Settlement Notices” means the documents entitled Notice of Settlement, to be approved by the Court in a form substantially similar to **Exhibit 3** (long form for email and Settlement Website) and **Exhibit 4** (postcard notice for mailing).
- 1.35** “Settlement Website” means the website that the Settlement Administrator will establish as soon as practicable following the entry of the Preliminary Approval Order but no later than thirty (30) days after the Court enters the Preliminary Approval Order, as a means for

the Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to the Settlement, Settlement Notice, Preliminary Approval Order, Complaint, and other such documents as Class Counsel and Defendants' Counsel agree to post, or that the Court orders posted, on the website. These documents shall remain on the Settlement Website at least sixty (60) days after the Effective Date. The Settlement Website shall not include any advertising.

**1.36** "Total Settlement Consideration" means the total amount Defendants will be required to pay under the terms of this Agreement, which is inclusive of the Class Payment Amount, attorneys' fees and costs, the Service Awards, and the Settlement Administration Costs.

**1.37** As used herein, the plural of any defined term includes the singular thereof and the singular of any defined term includes the plural thereof, as the case may be.

## **2 APPROVAL AND NOTICE TO CLASS MEMBERS**

**2.1** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.

### **2.2 The Settlement Administrator**

- i. The duties of the Settlement Administrator shall be governed by the terms of the Settlement Agreement. The Settlement Administrator will be responsible for the following tasks:
  - (a) researching and updating addresses for Class Members through any reasonable means, including but not limited to using the information in the Howard's TowBook System and Class List;
  - (b) implementing the Settlement Notice required by this Settlement pursuant to Section 2.4 of this Agreement;
  - (c) reporting on the status of the administration of the Settlement to the Parties;
  - (d) resolving any settlement payment dispute, in concert with the counsel for the Parties;
  - (e) providing the Parties with all necessary data;
  - (f) setting up, administering, and making payments from the Settlement Fund;
  - (g) calculating the settlement allocation for each Class Member;
  - (h) distributing Settlement Checks;



- (i) establishing a qualified settlement fund account;
  - (j) establishing and maintaining the Settlement Website;
  - (k) establishing and maintaining a post office box for requests for exclusions and objections to the Settlement;
  - (l) distributing all residual funds in accordance with Section 3.6 of this Agreement;
  - (m) submitting a declaration to the Court and counsel for the Parties at least ten (10) days before the date scheduled for Final Approval certifying that notice was provided in accordance with the terms of the Agreement and the total number Class Members who received the Settlement Notice, and the total number of Class Members who opted out of the Settlement; and
  - (n) performing such additional duties as the Parties and/or the Court may mutually direct.
- ii. All disputes relating to the Settlement Administrator's performance of its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement until all payments and obligations contemplated by this Settlement have been fully carried out.
  - iii. Settlement Administration Costs will be paid from the Total Settlement Consideration and shall include all costs necessary to administer the Settlement.
  - iv. The Parties will have equal access to the Settlement Administrator and all information related to the administration of the Settlement, except communications sent to and from Participating Class Members, or communications sent to and from Class Members regarding legal advice.
  - v. The Settlement Administrator shall provide information related to the administration of the Settlement to either Party upon request, except that the Settlement Administrator may not disclose the Social Security Numbers of Class Members for any reason.

### **2.3 Preliminary Approval**

- i. Upon execution of this Settlement, Class Counsel shall promptly move the Court for an order granting the Preliminary Approval Motion.

- ii. Among other things, the Preliminary Approval Motion will ask the Court to: (i) issue and enter the Preliminary Approval Order approving the Settlement as fair, adequate, and reasonable; (ii) approve the Settlement Administrator and Settlement Notice set forth herein, and form and content of the Settlement Notice; (iii) approve the procedures set forth in this Settlement for Class Members to exclude themselves from the Settlement or to object to the Settlement; (iv) stay all proceedings in the Litigation unrelated to the Settlement pending Final Approval of the Settlement; (v) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Class Members concerning any Participating Class Members' Released Claims; and (vi) schedule a Final Approval Hearing at a date that provides sufficient time for the deadlines contemplated by this Settlement and that is convenient for the Court, at which time the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel's application for attorneys' fees, costs, and expenses and Service Awards.
- iii. If the Court denies approval of this Agreement, the Parties may seek reconsideration or appellate review of the decision denying approval of the Agreement. In the event reconsideration and/or appellate review is denied, or a mutually agreed-upon settlement modification is not approved, and the Parties decide to forego further negotiation of a settlement, the Litigation will proceed as if no settlement had been attempted. In that event, neither the Settlement, the Agreement, nor the Preliminary or Final Approval Motions may be used by or against any party under Rule 408 of the Pennsylvania Rules of Evidence.

#### 2.4 Notice to Class Members

- i. Within ten (10) days after the entry of the Preliminary Approval Order, Class Counsel will provide the Settlement Administrator with the Class List.
- ii. Settlement Notices will be emailed to all Class Members that the Settlement Administrator has email addresses for and mailed via First Class United States Mail to any Class Members for which it does not have an email address. Such notice will be sent by the Settlement Administrator within thirty (30) days of the Settlement Administrator's receipt of the Class List. The Settlement Notices sent via email will be in substantially the form attached as **Exhibit 3**, which advises Class Members of the claims asserted in the Litigation, of their estimated Individual Settlement Amounts, how to exclude themselves from the Settlement, and the Settlement Website. The Settlement Notices sent by mail will be in post-card format, substantially in the form attached as **Exhibit 4**, which advises Class Members of the Settlement, including the URL for the Settlement Website for Class

Members to visit to find information on their estimated Individual Settlement Amounts and how to exclude themselves from the Settlement. The Notice set forth in **Exhibit 3** will be posted on the Settlement Website.

- iii. The Settlement Administrator shall take all reasonable steps to obtain the current address for any Class Member or Participating Class Member for whom the Settlement Notice or Settlement Check, respectively, is returned by the post office as undeliverable, including using driver's license numbers, license plate numbers, VINs, and any other available information to obtain better address information, and emailing Class Members or Participating Class Members about their current addresses, and shall attempt re-mailings. Any Settlement Notices or Settlement Checks returned as undeliverable shall be traced up to two (2) times to obtain a new address and be re-mailed by First Class United States Mail.
- iv. The Parties are aware that the information contained in the Howard's TowBook System is incomplete. In the case that the Settlement Administrator locates multiple individuals with the same name utilizing the Class List, an individual located in the Greater Pittsburgh, Pennsylvania region will be the presumptive Class Member to whom Settlement Notice should be provided.

## **2.5 Procedure for Opting Out of the Class**

- i. The Settlement Notice shall include a procedure for Class Members to opt out and exclude themselves from the Settlement by notifying, in writing, the Settlement Administrator, Class Counsel, and the Defendants' Counsel of their intent to exclude themselves from the Settlement. The notice shall be sent via first class postage prepaid U.S. mail to the addresses provide in the Settlement Notice. Such written requests for exclusion must be dated no later than the end of the Opt Out Period. The written request for exclusion must include the name of this Litigation or a decipherable approximation (*Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similar situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.)*), the full name, address, and telephone number of the Class Member or the name, address, telephone number, relationship, and signature of any individual who is acting on behalf of a deceased or incapacitated Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement. The Settlement Administrator shall provide the Parties with copies of all opt-out requests on a weekly basis and a final list of all who have timely and validly excluded themselves from the Settlement, which Class Counsel may move to file with the Court no later than ten (10) days prior to the Final Approval Hearing. Any Class Member who does not provide a timely request for

exclusion, or who does not provide all information required by this Settlement to exclude himself or herself, shall be bound by the terms of the Settlement, including all releases in the Settlement.

- ii. A Class Member who desires to be excluded but who fails to comply with the opt out procedure set forth herein shall not be excluded from the class.

## **2.6 Procedure for Objecting to the Class Action Settlement**

- i. The detailed notice of Settlement shall provide that Class Members who wish to object to the Settlement must file with the Court and serve on counsel for the Parties a written statement objecting to the Settlement. The notice of the objection must be postmarked no later than the Objection Date. For an objection to be considered by the Court, the Class Member's written objection must include:
  - (a) identification of the Litigation;
  - (b) the objector's full name, address, telephone number, and email address;
  - (c) all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
  - (d) the identity of all counsel who represent the objector, if any; and
  - (e) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and such written statement must be filed with the Court and served on counsel for the Parties no later than the Objection Date.
- ii. Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.
- iii. Any Class Member who both objects to the Settlement and opts-out will be deemed to have opted-out, and the objection shall be deemed null and void.

## **2.7 Final Approval**

- i. Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur, which shall be sufficiently far in advance to allow for the deadlines contemplated by this Settlement. By no later than thirty (30) days prior to the Final Approval Hearing, Class Counsel shall file a Motion

for Final Approval of the Settlement. Class Counsel shall move for Court approval of attorneys' fees, costs, and expenses and for Service Awards no later than fourteen (14) days prior to the Objection Date. Objectors, if any, shall file any response to Class Counsel's motions no later than seventeen (17) days prior to the Final Approval Hearing. By no later than ten (10) days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed. At the Final Approval Hearing, the Court will consider the Motion for Final Approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Class Members (or their counsel), who object to the Settlement and/or Class Counsel's attorneys' fees, costs, expenses, and/or Service Awards, provided the objectors filed timely objections that meet all of the requirements listed in this Settlement.

- ii. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment granting Final Approval of the Settlement, and whether to approve Class Counsel's application for attorneys' fees, costs, expenses, and Service Awards. The proposed Final Approval Order and Judgment that will be filed with the Final Approval Motion shall be in a form agreed upon by Class Counsel and Defendants' Counsel as set forth in **Exhibit 1** attached hereto. Such proposed Final Approval Order and Judgment shall, among other things:
  - (a) determine that the Settlement is fair, adequate, and reasonable;
  - (b) determine that the Settlement Notice provided satisfied the Pennsylvania Rules of Civil Procedure and due process requirements;
  - (c) dismiss all claims in the Complaint and Litigation, including Cross-Claims with prejudice;
  - (d) bar and enjoin the Releasing Parties from asserting any of the Class Representatives' Released Claims and the Participating Class Members' Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment;
  - (e) release and forever discharge Releasees from the Class Representatives' Released Claims and the Participating Class Members' Released Claims, as provided in this Settlement Agreement; and

- (f) reserve the Court's continuing and exclusive jurisdiction over Defendants and all Class Members (including all objectors) to administer, supervise, construe, and enforce this Settlement in accordance with its terms.

### **3 SETTLEMENT TERMS**

#### **3.1 Settlement Payments**

- i. In no event shall Defendants be required to pay or provide more than the Total Settlement Consideration in connection with this Settlement.
- ii. Boston Market will pay \$28,800 towards the Class Payment Amount within thirty (30) days after the Effective Date.
- iii. Howard's Towing will pay \$3,000 towards the Class Payment Amount. Within thirty (30) days after the Effective Date of this Agreement, Howard's Towing shall cause to be \$3,000 to be deposited into the Settlement Fund.
- iv. The Parties intend the Settlement Fund to be a "qualified settlement fund" under Internal Revenue Code § 468B and Treasury Regulation § 1.468B-1. Accordingly, Defendants shall retain no rights or reversionary interests in the Class Payment Amount once transferred to the Settlement Fund.
- v. The Settlement Fund shall be used by the Settlement Administrator to pay Class Members' Settlement Checks.
- vi. The Settlement Administrator will mail the Settlement Checks via First Class United States Mail to Participating Class Members, as described in Section 3.5, within thirty (30) days of the Effective Date of this Agreement.
- vii. If any remaining portion of the Settlement Fund remains at the close of the Check Cashing Period or the extended Check Cashing Period, it will be distributed as described in Section 3.6.

#### **3.2 Costs of Settlement Administration**

- i. Boston Market will separately pay the Settlement Administration Costs. Payment for the total projected Settlement Administration Costs shall not exceed \$3,900. Payment shall be made directly to the Settlement Administrator by check or wire transfer over four equal payments beginning thirty (30) days after the effective date. Each subsequent payment shall be made by check or wire within thirty (30) days of the previous payment until all four payments have been received by the Settlement Administrator.

#### **3.3 Payment Associated with Attorneys' Fees and Costs**

- i. Boston Market will pay Class Counsel's Court-approved attorneys' fees, costs, and expenses in an amount not to exceed a combined total of thirty-two thousand eight hundred dollars (\$32,800.00), which combined with its Class Payment Amount, Service Award payments, and Settlement Administration Costs will constitute its total portion of the Total Settlement Consideration payable hereunder. Boston Market shall make such payment to Class Counsel over twelve equal payments by check or wire transfer beginning thirty (30) days after the effective date. Each subsequent payment shall be made by check or wire within thirty (30) days of the previous payment until all twelve payments have been received by Class Counsel. This amount shall constitute full satisfaction of any claim for attorneys' fees or costs against the Boston Market, and Class Counsel agrees that they shall not seek, nor be entitled to, any additional attorneys' fees or costs under any theory or from any source incurred in relation to this case.
- ii. Howard's Towing will pay Class Counsel's Court-approved Attorneys' fees, costs, and expenses in amount not to exceed a combined total of two thousand dollars and zero cents (\$2,000.00), which combined with its Class Payment Amount will constitute its total portion of the Total Settlement Consideration payable hereunder. Howard's Towing shall make such payment to Class Counsel by wire transfer within thirty (30) days of the Effective Date. This amount shall constitute full satisfaction of any claim for attorneys' fees or costs against Howard's Towing, and Class Counsel agrees that they shall not seek, nor be entitled to, any additional attorneys' fees or costs under any theory or from any source incurred in relation to this case.
- iii. Defendants will not object to an application by Class Counsel for attorneys' fees, costs, and expenses, up to a total of \$34,800.00
- iv. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees, costs, and expenses awarded by the Court among Plaintiffs' counsel of record.
- v. Notwithstanding anything herein, no decision by the Court, or modification or reversal or appeal of any decision by the Court, that fails to approve, in whole or in part, the amounts of requested attorneys' fees, costs, and expenses will, prevent the Agreement from becoming effective, nor will it be grounds for termination of this Agreement. If the Court declines to approve, in whole or in part, the requested attorneys' fees, costs, and expenses in the amount set forth above, or at all, the remaining provisions of this Agreement will remain in full force and effect. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Class Counsel any particular amount of attorneys' fees.

### **3.4 Payment Associated with Service Award to Plaintiffs**

- i. Defendants shall not oppose Class Counsel's request for Service Awards to Plaintiffs. The Service Awards shall not exceed one thousand five hundred dollars (\$1,500.00) per Plaintiff, and a collective total of four thousand five hundred dollars (\$4,500.00). The Service Awards shall be paid separate from the Settlement Fund and shall be paid separate from any amounts payable as attorneys' fees or costs and/or as Settlement Administration Costs. Boston Market shall make such payment to directly to Plaintiffs, care of Class Counsel, by check or wire transfer over four equal payments beginning thirty (30) days after the effective date. Each subsequent payment shall be made by check or wire within thirty (30) days of the previous payment until all four payments have been received by Class Counsel.
- ii. These Service Awards and any requirements for obtaining any such payment are separate and apart from, and in addition to, potential recovery for Plaintiffs as Class Members.
- iii. Notwithstanding anything herein, no decision by the Court, or modification or reversal or appeal of any decision by the Court, that fails to approve, in whole or in part, the amounts of the requested Service Awards will prevent the Agreement from becoming effective, nor will it be grounds for termination of this Agreement. If the Court declines to approve, in whole or in part, the requested Service Awards in the amount set forth above, or at all, the remaining provisions of this Agreement will remain in full force and effect. The finality or effectiveness of the Settlement will not be dependent on the Court awarding Service Awards.

### **3.5 Distribution of Payments to Participating Class Members**

- i. Payments to Participating Class Members will be made from the Settlement Fund. The estimated Individual Settlement Amount for each Class Member will be determined by the Settlement Administrator pursuant to the following formula based on the number of individuals in the Howard's TowBook System, which shall be presumed to be accurate:
  - (a) To calculate each Class Member's proportionate estimated Individual Settlement Fund for the purposes of Settlement Notices:
    1. Each Class Member will receive an equal, *pro rata* share of the Settlement Fund.
    2. Each Class Members' share of the Settlement Fund will be determined by dividing the Settlement Fund by the total number of Class Members to obtain the "Portion of the Settlement Fund" for each Class Member.



- (b) To calculate each Participating Class Member's Individual Settlement Amount to be paid via Settlement Check, the same formula will be used as in Section 3.5(i)(a), except that a Participating Class Members' Individual Settlement Amount will be increased *pro rata* for each Class Member who timely and validly opted out of the Settlement.
- ii. All Class Members who do not timely and validly exclude themselves from the Settlement, shall be sent Settlement Checks. The back of the Settlement Checks will include a statement providing that "I understand that by cashing, depositing, or otherwise negotiating this check I will be deemed to have participated in the case of *Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similar situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky, GD-18-012332* and, in doing so, acknowledge and agree that I am releasing claims I may have against Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky related to their use of Howard's Towing for a non-consensual tow from the parking lot located at 5200 Baum Blvd., Pittsburgh, PA 15224."
- iii. The Settlement Administrator's calculations regarding the Individual Settlement Amounts from the Settlement Fund will be final and binding.
- iv. The Settlement Administrator shall use reasonable efforts to make one additional mailing to Participating Class Members whose checks are returned because of incorrect addresses. Such efforts shall include: (a) obtaining correct addresses as described in Section 2.4(iii) and/or (b) attempting to reach these individuals by phone and/or e-mail.
- v. Participating Class Members receiving a Settlement Check will have the duration of the Check Cashing Period to negotiate their checks. Settlement Checks not cashed during the Check Cashing Period shall no longer be valid. However, the Settlement Administrator is authorized to reissue an expired, unredeemed, lost, destroyed, or never received Settlement Check, upon request of a Class Member, if such request is made within one-hundred eighty (180) days from the start of the Check Cashing Period. Any reissued Settlement Checks not cashed within one-hundred eighty (180) days from the start of the of the Check Cashing Period shall become void, and the Settlement Administrator shall issue a "stop payment" thereon.

### **3.6 Distribution of Residual Funds**

The Parties anticipate that, as a result of Class Members' failure to redeem Settlement Checks, some funds may still remain in the Settlement Fund after the close of the Check Cashing Period and all Class Members have had a reasonable opportunity to request

reissued Settlement Checks. On or after one-hundred eighty (180) days after the initial issuance of Settlement Checks, the Parties will instruct the Settlement Administrator to disburse 50% of the residual funds to the Pennsylvania Interest on Lawyers Trust Account Board, and to disburse the remaining 50% to 412 Food Rescue.

### **3.7 Non-Monetary Relief**

Boston Market agrees that they will post in the Parking Lot, which forms the basis of this Litigation, a sign advising to potential parkers that they may be towed if they are not patronizing an approved retailer and advising that the tow fee charged will not exceed the amount permitted by 5 Pittsburgh Code §§ 525.05.

## **4 RELEASE OF CLAIMS**

**4.1** Plaintiffs, in their individual, as opposed to representative capacities, and on behalf of their respective executors, administrators, successors, assigns, and all persons or entities claiming any right or rights through them shall be deemed to forever release, covenant not to sue, acquit, discharge, and waive in favor of the Releasees, the Class Representatives' Released Claims.

**4.2** Plaintiffs are entering into the Settlement Agreement on behalf of themselves individually, and as representatives of the Class, of their own free will and without the receipt of any consideration other than what is provided in the Settlement Agreement or disclosed to and authorized by the Court. Plaintiffs have reviewed the terms of the Agreement and believe them to be fair and reasonable, and covenants that they will not opt out of the Class or object to the Agreement.

**4.3** By participating in the Settlement, Participating Class Members on behalf of themselves and their respective executors, family members, administrators, successors, assigns, and all persons or entities claiming any right or rights through them shall be deemed to forever release, covenant not to sue, acquit, discharge and waive in favor of the Releasees, the Participating Class Member's Released Claims.

**4.4** Boston Market and Howard's Towing release, discharge and waive in favor of the other, the mutual releases as set forth in the definition section of this Settlement Agreement at Paragraph 1.9.

## **5 PARTIES' AUTHORITY**

**5.1** The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

## **6 MUTUAL COOPERATION**

**6.1** The Parties agree to reasonably cooperate with each other and to take all steps necessary and appropriate to obtain the Court's approval of this Agreement and all of its terms and

to effectuate the terms of this Agreement, including, but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their commercially reasonable efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein.

## 7 NOTICES

7.1 Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

For Plaintiffs and/or Class:

Kelly K. Iverson  
Lynch Carpenter LLP  
1133 Penn Ave, 5th floor  
Pittsburgh PA, 15222  
Email: Kelly@lcllp.com  
Phone: 412.322.9243

Joshua P. Ward  
J.P. Ward & Associates  
201 S. Highlight Ave, Suite 201  
Pittsburgh, PA 15206  
Email: Jward@jpward.com  
Phone: 412.545.3016

For Boston Market:

Benjamin A. Kift  
The Lynch Law Group  
501 Smith Drive  
Suite 3  
Cranberry Twp., PA 16066  
Email: Bkift@lynchlaw-group.com  
Phone: 724.776.8000

For Howard's Towing:

Joseph A. Hudock Jr.  
Summers, McDonnell, Hudock, Guthrie  
& Rauch, P.C.  
Gulf Tower  
Ste. 22400  
707 Grant Street  
Pittsburgh PA, 15219  
Email: jhudock@summersmcdonnell.com

Phone: 412.261.3232

## **8 NO ADMISSION OF LIABILITY**

- 8.1** Defendants deny all of the allegations made by Plaintiffs in the Litigation and deny that they are liable or owes damages to anyone with respect to the alleged facts or causes of action asserted in the Litigation. Nonetheless, without admitting or conceding any liability or damages whatsoever, Defendants have 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.
- 8.2** Class Counsel and Class Representatives believe that the claims asserted in the Litigation have merit, and they have examined and considered the benefits to be obtained under the Agreement, risks associated with the continued prosecution of this complex, costly, and time-consuming litigation, and likelihood of success on the merits of the litigation. Class Counsel and Class Representatives have concluded that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Class Members.
- 8.3** For the purpose of Settlement only, the Parties agree that Plaintiffs will be considered the prevailing party under Pa. Stat. § 201-9.2 of the UTPCPL.

## **9 INTERPRETATION AND ENFORCEMENT/MISCELLANEOUS TERMS**

- 9.1** Further Acts. Each party, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 9.2** No Solicitation of Settlement Objections. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Settlement or to appeal from any orders of the Court granting Preliminary Approval, Final Approval, and Final Judgment
- 9.3** No Assignment of Claims. Class Representatives represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the Litigation, or any related action, and any attempt to do so shall be of no force or effect.
- 9.4** Successors and Assigns. This Agreement shall be binding upon the successors and assigns of Defendants.
- 9.5** Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into this Agreement.

- 9.6** Binding Effect. This Agreement shall be binding upon the Parties and, with respect to the Defendants, their affiliates, parents, subsidiaries, predecessors, successors, employees, and agents; and, with respect to Class Representatives and Participating Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, and assigns.
- 9.7** Arms' Length Transaction; Materiality of Terms. The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise expressly stated.
- 9.8** Captions. The captions or headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 9.9** Construction. The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this Agreement, and therefore, the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any party by virtue of draftsmanship.
- 9.10** Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the Commonwealth of Pennsylvania.
- 9.11** Survival. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.
- 9.12** Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation and implementation of this Agreement, as well as any and all matters arising out of or related to the interpretation or implementation of this Agreement and of the Settlement contemplated thereby.
- 9.13** Waivers, etc. to be in Writing. No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification, or amendment, with any required Court approval. Any failure by any party to insist upon the strict performance by the other party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.
- 9.14** Counterparts. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same

original instrument. An electronic copy, PDF, or facsimile of an original signed counterpart shall be deemed an original for all purposes.

- 9.15** Facsimile, E-mail, and Electronic Signatures. Signature pages may be executed by “wet” signature (*i.e.*, using pen and paper) or electronic signature (*i.e.*, using DocuSign). The executed signature pages may be delivered using facsimile or electronic means, including PDF or similar file type transmitted via email, cloud-based server, or e-signature technology.
- 9.16** Exhibits. The Exhibits to this Agreement are expressly incorporated by reference and made part of the terms and condition set forth herein.
- 9.17** Signatories. This Agreement is valid and binding if signed by Defendants’ authorized representatives and Plaintiffs, and approved by the Court.

**[SIGNATURE PAGE FOLLOWS]**

**WE AGREE TO THESE TERMS.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Plaintiffs:

*K. J. Rattford*

Date: 2/1/23

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Defendants:

*[Signature]*

Boston Market Corporation

By: JAY PAUDYA

Title: President

Date: 2/1/23

DocuSigned by:  
Howard Szuminsky  
B217215CF26E46F...  
Howard Szuminsky

Howard's Towing and Recovery, LLC

By: Howard Szuminsky

Title:

Date: 5/11/2023

DocuSigned by:  
Howard Szuminsky  
B217215CF26E46F...  
Howard Szuminsky

Howard Szuminsky

By: Howard Szuminsky

Title:

Date: 5/11/2023

**WE AGREE TO THESE TERMS.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Plaintiffs:

Dana Cohen

Date: 2-28-23

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Defendants:

\_\_\_\_\_  
Boston Market Corporation

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
Howard's Towing and Recovery, LLC

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
Howard Szuminsky

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_



**WE AGREE TO THESE TERMS.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Plaintiffs:

Jack Leon

Date: 2/24/23

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Defendants:

\_\_\_\_\_  
Boston Market Corporation

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
Howard's Towing and Recovery, LLC

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
Howard Szuminsky

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

**WE AGREE TO THESE TERMS.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

Plaintiffs:

James C. Miller

Date: 3-1-23

\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Defendants:

\_\_\_\_\_  
Boston Market Corporation

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
Howard's Towing and Recovery, LLC

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

\_\_\_\_\_  
Howard Szuminsky

By: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

# Exhibit 1

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

DANA COHEN, JACK LEON, and JAMES MILLER, individually and on behalf of all others similarly situated;

Plaintiffs,

v.

UPMC PRESBYTERIAN SHADYSIDE;  
BOSTON MARKET CORPORATION;  
HOWARD'S TOWING AND RECOVERY,  
LLC; and HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION

NO. GD-18-012332

**[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT**

On \_\_\_\_\_, this Court entered an order granting preliminary approval (the “Preliminary Approval Order”) of the Settlement between Plaintiffs Dana Cohen, Jack Leon, and James Miller (“Class Representatives” or “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendants Boston Market Corporation, (“Boston Market”) and Howard’s Towing and Recovery, LLC and Howard Szuminsky (collectively “Howard’s Towing”) (and together with Boston Market, “Defendants”) as memorialized in the attachment to Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement;<sup>1</sup>

Pursuant to the notice requirements set forth in the Settlement and in the Preliminary Approval Order, the Class was apprised of the nature and pendency of the Litigation, the terms of the Settlement, and their rights to request exclusion, file claims, object, and/or appear at the final approval hearing;

---

<sup>1</sup> The capitalized terms used in this Final Approval Order and Judgment shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.

On \_\_\_\_\_, Plaintiffs filed their Motion for Final Approval of the Class Action Settlement (“Final Approval Motion”) and accompanying Memorandum of Law and supporting exhibits, and on \_\_\_\_\_ Class Counsel filed their Application for Attorneys’ Fees, Expenses and Service Awards and accompanying Memorandum of Law and supporting exhibits (“Fee Application”); and

The Court held a final approval hearing to determine, *inter alia*: (1) whether the Settlement is fair, reasonable, and adequate; and (2) whether judgment should be entered dismissing all claims in the Second Amended Complaint with prejudice. Prior to the final approval hearing, Class Counsel filed a declaration from the Settlement Administrator confirming that the Notice was completed in accordance with the Parties’ instructions and the Preliminary Approval Order. Therefore, the Court is satisfied that Class Members were properly notified of their right to appear at the final approval hearing in support of or in opposition to the proposed Settlement, the award of attorneys’ fees, costs, and expenses, and the payment of Service Awards.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and Counsel for Defendants, having reviewed all of the submissions presented with respect to the proposed Settlement, having determined that the Settlement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys’ fees, costs, and expenses, and the application for Service Awards, and having reviewed the materials in support thereof, and good cause appearing in the record and Plaintiffs’ Final Approval Motion is **GRANTED**, and Class Counsel’s Fee Application is **GRANTED**, and:

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Court has jurisdiction over the subject matter of this action and over all claims raised therein and all Parties thereto, including the Class Members. The Court also has personal jurisdiction over the Parties and the Class Members.

2. The Settlement was entered into in good faith following arm's length negotiations and is non-collusive.

3. The Settlement is, in all respects, fair, reasonable, and adequate, is in the best interests of the Class, and is therefore approved. The Court finds that the Parties faced significant risks, expenses, delays and uncertainties, including as to the outcome, of continued litigation of this complex matter, which further supports the Court's finding that the Settlement is fair, reasonable, adequate and in the best interests of the Class Members. The Court finds that the uncertainties of continued litigation in both the trial and appellate courts, as well as the expense associated with it, weigh in favor of approval of the Settlement.

4. This Court grants final approval of the Settlement, including but not limited to the releases in the Settlement and the plans for distribution of the settlement relief. The Court finds that the Settlement is in all respects fair, reasonable, and in the best interest of the Class. Therefore, all Class Members who have not opted out are bound by the Settlement and this Final Approval Order and Judgment.

5. The Settlement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth herein and shall have the full force of an Order of this Court.

6. The Parties shall effectuate the Settlement in accordance with its terms.

### **Objections and Opt Outs**

7. \_\_\_\_\_ objections were filed by Class Members. The Court has considered all objections and finds the objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects

8. All persons who have not objected to the Settlement in the manner provided in the Settlement are deemed to have waived any objections to the Settlement, including but not limited to by appeal, collateral attack, or otherwise.

9. A list of those Class Members who have timely and validly elected to opt out of the Settlement and the Class in accordance with the requirements in the Settlement (the “Opt-Out Members”) has been submitted to the Court in the Declaration of \_\_\_\_\_, filed in advance of the final approval hearing. That list is attached as **Exhibit A** to this Order. The persons and/or entities listed in **Exhibit A** are not bound by the Settlement, this Final Approval Order and Judgment, and are not entitled to any of the benefits under the Settlement. Opt-Out Members listed in **Exhibit A** shall be deemed not to be Releasing Parties.

### **Notice to the Class**

10. The Court finds that the Notice Program, set forth in the Settlement and effectuated pursuant to the Preliminary Approval Order, satisfied Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements, was the best notice practicable under the circumstances, was reasonably calculated to provide and did provide due and sufficient notice to the Class of the pendency of the Litigation, the existence and terms of the Settlement, their right to exclude themselves, their right to object to the Settlement and to appear at the Final Approval Hearing, and satisfied the other requirements of the Pennsylvania Rules of Civil Procedure and all other applicable laws.

**Award of Attorneys' Fees, Costs, and Expenses and Service Awards**

11. The Court has considered Class Counsel's Motion for attorneys' fees, costs, and expenses, and for Service Awards.

12. For the purpose of Settlement only, Plaintiffs Cohen, Leon, and Miller are considered the prevailing party under Pa. Stat. § 201-9.2 of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL").

13. Pursuant to Rule 1717 and applicable caselaw, the Court awards Class Counsel \$34,800.00 as an award of reasonable attorneys' fees and reimbursement of reasonable expenses in accordance with the Settlement. The Court finds this amount of fees, costs, and expenses to be fair and reasonable in light of: (1) the time and effort reasonably expended by Class Counsel in the litigation; (2) the quality of the services rendered; (3) the results achieved and benefits conferred upon the Class; (4) the magnitude, complexity, and uniqueness of the litigation, and (5) the fact that Class Counsel provided their services on a contingency fee basis. This award of attorneys' fees, costs, and expenses shall be paid by Boston Market and Howard's Towing in accordance with the Settlement. This award of attorneys' fees, costs, and expenses is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement.

14. The Court grants Class Counsel's request for Service Award and awards \$1,500.00 to each of the named Plaintiffs.

15. The Court finds that this payment is justified by their service to the Class. The Service Awards shall be paid in accordance with the provisions of the Settlement Agreement.



### **Other Provisions**

16. The Parties to the Settlement shall carry out their respective obligations thereunder.

17. Within the time period set forth in the Settlement, the relief provided for in the Settlement shall be made available to Participating Class Members, pursuant to the terms and conditions of the Settlement.

18. As of the Effective Date, Plaintiffs Cohen, Leon, and Miller, individually, releases any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, which they may have or claim to have against Defendants and/or any of the Releasees which occurred on or before the date of this Agreement. The Release contained in this paragraph applies without limitation to all Releasees. This Release specifically includes but is not limited to claims alleged in the Litigation, compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-1 *et seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract, common law or tort or arising or accruing during the Relevant Period, that they have or may have, whether known or unknown, against the Defendants and/or any of the Releasees.

19. As of the Effective Date, all Participating Class Members release any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, which the Participating Class Member may

have or claim to have against Defendants and/or any of the Releasees which occurred on or before the date of this Agreement. The Release contained in this paragraph applies without limitation to all Releasees. This Release is limited to the claims alleged in the Litigation, including any compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”), 73 P.S. § 201-1 *et seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract, common law or, tort or arising or accruing during the Relevant Period, that they have or may have, whether known or unknown, against the Defendants and/or any of the Releasees that arose out of, or in connection with the claims or facts alleged or set forth in the Litigation.

20. As of the Effective Date, Boston Market and Howard’s Towing fully release any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, which Boston Market and Howard’s Towing have alleged against each other in the Litigation or that may arise out of the cross-claim allegations or within the Complaint which occurred on or before the date of this Agreement.

21. The Class Representatives and Participating Class Members are enjoined from prosecuting any Released Claims in any proceeding against any of the Defendants’ Released Persons or prosecuting any claim based on any actions taken by any of the Defendants’ Released Persons that are authorized or required by this Settlement or by the Final Approval Order and Judgment. It is further agreed that the Settlement and/or this Final Approval Order and Judgment may be pleaded as a complete defense to any proceeding subject to this section.

22. This Final Approval Order and Judgment and the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendants of any claim, any fact alleged in the Litigation, any fault, any wrongdoing, any violation of law, or any liability of any kind on the part of the Defendants or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation.

23. This Final Approval Order and Judgment, the Settlement, and all acts, statements, documents, and proceedings relating to the Settlement shall not be offered, received, or admissible in evidence in any action or proceeding, or be used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature or that Plaintiffs, any Class Member, or any other person has suffered any damage; provided, however, that nothing in the foregoing, the Settlement, or this Final Approval Order and Judgment shall be interpreted to prohibit the use of the Settlement or this Final Approval Order and Judgment in a proceeding to consummate or enforce the Settlement or this Final Approval Order and Judgment (including all releases in the Settlement and Final Approval Order and Judgment), or to defend against the assertion of any Released Claims in any other proceeding, or as otherwise required by law.

24. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims (and other prohibitions set forth in this Final Approval Order and Judgment) that are brought, initiated, or maintained by, or on behalf of, any Participating Class Member or any other person subject to the provisions of this Final Approval Order and Judgment.

25. The Court hereby dismisses the Litigation and Complaint and all claims therein on the merits and with prejudice, without fees or costs to any Party except as provided in this Final Approval Order and Judgment.

26. Consistent with the Settlement, if the Effective Date, as defined in the Settlement Agreement, does not occur for any reason, this Final Approval Order and Judgment and the Preliminary Approval Order shall be deemed vacated and shall have no force and effect whatsoever; the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment shall cease to be of any force and effect, and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into the Settlement. In such an event, the Parties shall be restored to their respective positions in the Litigation as if the Settlement Agreement had never been entered into.

27. Without affecting the finality of this Final Approval Order and Judgment, the Court will retain jurisdiction over the subject matter and the Parties with respect to the interpretation and implementation of the Settlement for all purposes, including enforcement of its terms at the request of any party and resolution of any disputes that may arise relating in any way to, arising from, the implementation of the Settlement or the implementation of this Final Order and Judgment.

**IT IS SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_.**

BY THE COURT:

\_\_\_\_\_, J.  
The Honorable Philip A. Ignelzi

# Exhibit 2

**IN THE COURT OF COMMON PLEAS  
OF ALLEGHENY COUNTY, PENNSYLVANIA**

DANA COHEN, JACK LEON, and JAMES MILLER, individually and on behalf of all others similarly situated;

Plaintiffs,

v.

UPMC PRESBYTERIAN SHADYSIDE;  
BOSTON MARKET CORPORATION;  
HOWARD'S TOWING AND RECOVERY, LLC; and HOWARD SZUMINSKY,

Defendants.

CIVIL DIVISION – CLASS ACTION

NO. GD-18-012332

**[PROPOSED] ORDER OF COURT GRANTING PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, upon review of Plaintiffs'

Unopposed Motion for Preliminary Approval of Class Action Settlement and For Authorization of Class Notice as between Plaintiffs Dana Cohen, Jack Leon, and James Miller ("Class Representatives" or "Plaintiffs"), individually and on behalf of all others similarly situated, and Defendants Boston Market Corporation, ("Boston Market") and Howard's Towing and Recovery, LLC and Howard Szuminsky (collectively "Howard's Towing") (and together with Boston Market, "Defendants") it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The Court has reviewed the Parties' Proposed Class Action Settlement Agreement and Release ("Settlement" or "Agreement") and Exhibits attached thereto, Plaintiffs' Unopposed Motion for Preliminary Approval, and Memorandum in Support.

2. To the extent not otherwise defined herein, all capitalized terms shall have the meanings attributed to them in the Agreement.

3. The Court has jurisdiction over the subject matter of this action, and personal jurisdiction over all parties to the litigation, including all Class Members.

#### **Reasonableness of the Proposed Settlement**

4. The Court finds that: (i) the proposed Settlement resulted from extensive and good-faith negotiations at arms' length; (ii) the proposed Settlement was concluded only after extensive discovery and litigation including contested class certification and conciliation facilitated by the Court; and (iii) the terms of the proposed Settlement as evidenced by the Agreement appears to be sufficiently fair, reasonable, and adequate in light of the risks, delays, and expenses of further litigation, warranting the sending and website publication of the Notices of Class Action Settlement in the forms attached to the Agreement as Exhibit 3 and 4, and the scheduling of a Final Fairness Hearing.

5. The Court finds that the Proposed Settlement includes sufficient monetary consideration to provide all Class Members with considerable financial recovery, which is within the range of reasonableness and an adequate exchange for the Class's release of claims as described in the Agreement.

6. Accordingly, the Court grants preliminary approval of the Settlement, subject to final approval, and authorizes the Parties to conduct their plan for Notice as described in the Agreement.

#### **Notice Plan and Form of Notice**

7. The Court finds that the form, content, and method of giving notice to the Class as described in the Settlement and exhibits: (a) constitute the best practicable notice to the Class;

(b) are reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Pa. R. Civ. P. 1712 and 1714, the constitutional requirement of due process, and any other legal requirements. The Court further finds that the notices are written in plain language, use simple terminology, and are designed to be readily understandable by Class Members.

8. The Parties and Settlement Administrator are authorized to make non-material modifications to the notices, such as proofing and formatting alterations and filling in dates, without further Order from this Court.

9. Analytics Consulting LLC is approved as the Settlement Administrator. The Settlement Administrator is directed to carry out the notice plan in conformance with the Settlement and to perform all other tasks that the Agreement requires, including the creation of a Qualified Settlement Fund.

10. Within 10 days from the entry of this Order, Class Counsel will provide the Settlement Administrator with the Class List. The Settlement Administrator shall cause notice to be disseminated to Class Members within 30 days of its receipt of the Class List. Notice shall be sent to all Class Members identified by the Settlement Administrator based on the information provided by Howard's Towbook Systems, and upon reasonable investigation, as needed to identify Class Members. The Notice from Exhibit 3 shall also be posted on a Settlement Website.

#### **Opting Out from the Class**

11. Any Class Member who wishes to be excluded from the Class must mail a written notification of their intent to exclude himself or herself from the Settlement to the Settlement



Administrator, Class Counsel, and Defendants' Counsel at the addresses provided in the Notice, postmarked no later than the end of the Opt Out Period, which shall be 60 days from the date which the Settlement administrator first mails or emails Notice to the Class, as specified in the Notice, and sent via first class postage pre-paid United States mail. The written request for exclusion must include the name of this Litigation or a decipherable approximation (*Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similarly situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky*, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.)), the full name, address, and telephone number of the Class Member or the name, address, telephone number, relationship, and signature of any individual who is acting on behalf of a deceased or incapacitated Class Member; and the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement.

12. Any Class Member who submits a valid and timely notice of their intent to opt out of the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Class Member that does not timely and validly opt himself or herself out from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Class Member that has not submitted a timely, valid written Opt-Out Form (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

### Objections to the Settlement

13. A Class Member who complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and expenses, and/or the request for Service Awards.

14. No Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Class Member shall be received and considered by the Court, unless the objection is (a) filed with the Court; and (b) be served on Class Counsel and Counsel for the Defendants at the addresses listed in the Notice, and postmarked by no later than the Objection Date, which shall be 60 days from the date which the Settlement administrator first mails or emails Notice to the Class, as specified in the Notice. For the objection to be considered by the Court, the objection shall set forth:

- a. The name of the Litigation: *Dana Cohen et. al. v. Boston Market Corporation et. al.*, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.), or a decipherable approximation;
- b. the objector's full name, address, telephone number, and email address;
- c. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- d. the identity of all counsel who represent the objector, if any; and
- e. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and such written statement must be filed with the Court and served on counsel for the parties no later than the Objection Date.

15. In addition, any Class Member who objects to the proposed Settlement must make himself or herself available to be deposed regarding the grounds for the objection and must provide along with the objection the dates when the objector will be available to be deposed

during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

16. Any Class Member who fails to comply with the provisions in this Order will waive and forfeit any and all rights they may have to object, and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Class Member who both objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

#### **Distribution Plan**

17. The Settlement establishes a process and methodology for paying Class Members their share of the Settlement Fund. Specifically, the Settlement Administrator will employ the following procedure to distribute the Settlement Fund. The Settlement Administrator will divide the Settlement Fund by the total number of Class Members to determine each Class Member's *pro rata* share of the Settlement Fund ("Portion of the Settlement Fund"). The Settlement Administrator will then increase each Class Member's Portion of the Settlement Fund *pro rata* for each Class Member who has opted out of the Settlement to determine each Participating Class Member's Individual Settlement Amount. The Settlement Administrator will then distribute to each Participating Class Member their Participating Class Member's Individual Settlement Amount. The Court preliminarily approves this process.

#### **Termination of the Settlement and Use of this Order**

18. This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is

terminated in accordance with the terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

19. If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Class Representative or any other Class Member that his or her claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense or claims it may have in this Litigation or in any other lawsuit.

#### **Stay of Proceedings**

20. Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

#### **Continuance of Final Approval Hearing**

21. The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the Settlement Website.

#### **Actions by Class Members**

22. The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Class Members against Defendants related to

their nonconsensual tow from the Parking Lot by Howard's Towing during the applicable statute of limitations.

**Final Approval Hearing**

23. A Final Approval Hearing shall take place before the Court on \_\_\_\_\_, 202\_ at \_\_\_\_\_ a.m./p.m. in Courtroom \_\_\_ before Judge Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, to determine, among other things, whether: (a) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Second Amended Complaint and Litigation should be dismissed with prejudice; (b) Class Members should be bound by the releases set forth in the Settlement; (c) the proposed Final Approval Order and Judgment should be entered; (d) the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved; and (e) the application for Service Awards to the Class Representatives should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

24. Class Counsel shall submit their application for fees, costs, and expenses and the application for Service Awards at least 14 days before the Objection Deadline. Objectors, if any, shall file any response to Class Counsel's motions no later than 14 days prior to the Final Approval Hearing. By no later than 7 days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

25. Any Class Member that has not timely and properly excluded himself or herself from the Class in the manner described below, may appear at the Final Approval Hearing in

person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Class Member that has elected to exclude himself or herself from the Class shall be entitled to object or otherwise appear, and, further provided, that no Class Member shall be heard in opposition to the Settlement unless the Class Member complies with the requirements of this Order pertaining to objections, which are described above and in the Notice.

**Summary of Deadlines**

26. The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

<b><u>Event</u></b>	<b><u>Deadline</u></b>
Class Counsel to Provide Class List to Settlement Administrator	Within 10 days after the entry of the Preliminary Approval Order
Notice Date	No later than 30 days after receipt of the Class List from Class Counsel
Objection and Opt-Out Deadline	60 days from the date which the Settlement administrator first mails or emails Notice to the Class, which date will be included on the Notice and posted on the Settlement Website.
Final Approval Hearing:	A date to be set by the Court no earlier than 121 days after the entry of the Preliminary Approval Order
Application for Attorneys' Fees, Expenses, and Service Awards ("Fee Application")	No later than 14 days prior to the Objection and Opt-Out Deadline.
Motion for Final Approval of the Settlement ("Final Approval Motion")	21 days prior to Final Approval Hearing
Objectors', if any, Response to Final Approval Motion and Fee Application	14 days prior to Final Approval Hearing

Replies in Support of Final Approval and Fee Motions	7 days Prior to Final Approval Hearing
--	--

It is so Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

BY THE COURT:

\_\_\_\_\_, J.  
The Honorable Philip A. Ignelzi

# Exhibit 3



[Insert Name of Class Member]

[Insert Address]

Re: NOTICE OF SETTLEMENT OF CLASS ACTION LAWSUIT  
Towed Vehicle Description: [Insert any information we have on vehicle]

**You have been identified as an individual whose vehicle was non-consensually from the parking lot located at 5200 Baum Boulevard, Pittsburgh, PA 15224 by Howard's Towing and Recovery LLC.**

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

*Your legal rights are affected whether you act or don't act. Please read this Notice carefully.*

- A settlement has been proposed to resolve a lawsuit against Howard's Towing and Recovery, LLC, Howard Szuminsky (collectively "Howard's Towing"), and Boston Market Corporation ("Boston Market") (and collectively with Howard's Towing, "Defendants") brought by Dana Cohen, Jack Leon, and James Miller ("Plaintiffs" or "Class Representatives"), on behalf of themselves and all persons similarly situated. The lawsuit, referred to as captioned *Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similarly situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky*, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.), asserts claims on behalf of a class of individuals towed from the parking lot located at 5200 Baum Boulevard, Pittsburgh, PA 15224 (the "Parking Lot"). Plaintiffs allege that following non-consensual tows from the Parking Lot, Defendants charged amounts exceeding the maximum allowable as set forth under the Pittsburgh Code of Ordinances and Pennsylvania law and asserts that Defendants violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat § 202-1, *et. seq.*, the Pennsylvania Fair Credit Extension Uniformity Act ("PaFCEUA"), 73 Pa. Stat. § 2270.1, *et seq.*, and various common law causes of action. Defendants deny these allegations, deny any wrongdoing, and deny that they would be found liable to Plaintiffs and the Class.

- On July 29, 2021, the Court certified this lawsuit to proceed as a class action on behalf of the following class of individuals:

Class Members: all individuals who were charged and paid a fee in excess of the limits

then set by 5 Pittsburgh Code §§ 525.05 for release or return of any passenger cars, light trucks, motorcycles, and scooters that were nonconsensually towed from the Parking Lot by Howard’s Towing within the applicable statutes of limitation. Parking Lot by Howard’s Towing within the applicable statute of limitations.

- The parties reached an agreement to settle the lawsuit through conciliation facilitated by the Court. On [Insert DATE], the Court granted Preliminary Approval of the Settlement Class consisting of all members of the above-described class.
- Under the Settlement, Boston Market will pay \$28,800.00 and Howard’s Towing will pay \$3,000.00 into a Settlement Fund for a total of \$31,800.00, out of which the Settlement Administrator will make payments to Class Members. The methods that will be used to distribute these funds to Class Members are described in detail in this Notice.
- Further, if approved by the Court, Boston Market will pay up to \$32,800.00 in fees, costs, and expenses to attorneys for the Class, plus a service award of \$2,500.00 for each Class Representative. Boston Market will also pay the settlement administration costs. Howard’s Towing will additionally pay up to \$2,000.00 in fees, costs, and expenses to attorneys for the Class. These payments will be made separate from the Settlement Fund that will be used to pay the Class Members.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>DO NOTHING, AND RECEIVE AUTOMATIC PAYMENT</b>	If you do nothing, you will receive a cash payment from the Settlement Fund equal to <i>pro rata</i> share of the Settlement Fund.
<b>EXCLUDE YOURSELF</b>	If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Howard’s Towing, Howard Szuminsky, or Boston Market for the same claims. This is the only option that leaves you the right to file your own lawsuit for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must contain all the information required by the Settlement.

<b>OBJECT</b>	You can remain in the Class and file an objection telling the Court why you believe the Settlement should not be approved. If your objections are overruled, you will be bound by the Settlement.
---------------	---

- Your options and other basic information are explained in this Notice. To ask to be excluded, you must act before **[INSERT OPT OUT DATE]**.
- The Court in charge of this case still must decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.
- **Any questions? Read on and visit the Settlement Website at **[INSERT WEBSITE]****

## WHAT THIS NOTICE CONTAINS

<b>BASIC INFORMATION.....</b>	<b>PAGE 5</b>
1. Why did I get this notice?	
2. What is this lawsuit about?	
3. What is a class action and who is involved?	
4. Why is there a settlement?	
<b>WHO IS PART OF THE SETTLEMENT.....</b>	<b>PAGE 6</b>
5. How do I know if I am part of the Settlement?	
6. Are there exceptions to being included?	
7. I am still not sure if I am included.	
<b>THE SETTLEMENT BENEFITS.....</b>	<b>PAGE 6</b>
8. What does the Settlement provide?	
9. How much will my payment be?	
<b>HOW TO GET A PAYMENT.....</b>	<b>PAGE 6</b>
10. How can I get a payment?	
11. When will I get my payment?	
12. What am I giving up to receive a payment?	
<b>EXCLUDING YOURSELF FROM THE SETTLEMENT.....</b>	<b>PAGE 7</b>
13. How can I opt out of the Settlement?	
14. Why would I ask to be excluded?	
15. If I exclude myself, can I get money from this Settlement?	
<b>THE LAWYERS REPRESENTING YOU.....</b>	<b>PAGE 8</b>
16. Do I have to get a lawyer in this case?	
17. Should I get my own lawyer?	
18. How will the lawyers and the individuals representing the class be paid?	
<b>OBJECTING TO THE SETTLEMENT.....</b>	<b>PAGE 9</b>
19. How do I tell the Court that I do not like the Settlement?	
20. What is the difference between objecting and excluding myself/opting out?	
<b>THE COURT'S FINAL APPROVAL HEARING.....</b>	<b>PAGE 10</b>
21. When and where will the Court decide whether to approve the Settlement?	
22. Do I have to attend the hearing?	
<b>GETTING MORE INFORMATION.....</b>	<b>PAGE 11</b>
23. Are more details available?	

## BASIC INFORMATION

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

Howard's Towing's records show that a vehicle you own or were operating was non-consensually towed from the parking lot located at 5200 Baum Boulevard, Pittsburgh, PA 15224, or that you paid a fee for such tow, between September 2012 and June 2018 that was more than amount set forth in the City Ordinances. A group of similarly situated individuals filed the proposed class action lawsuit against Defendants in 2018, alleging that Defendants charged more than the maximum set forth under the Pittsburgh Code of Ordinances for non-consensual tows from the Parking Lot. The Court later allowed the action to proceed as a class action. The parties have now reached a proposed settlement of the lawsuit.

The Court authorized this Notice to inform you of your rights under the proposed class action Settlement before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections and appeals are resolved, a Settlement Administrator (Analytics Consulting LLC) will make the cash payments that the Settlement allows, and the pending legal claims against Defendants will be released and dismissed.

This package explains the lawsuit, the Settlement, your rights, what benefits are available, who is eligible form them, and how to get them. The lawsuit is captioned: *Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similarly situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky*, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.)

### 2. What is this lawsuit about?

Plaintiffs Dana Cohen, Jack Leon, and James Miller brought this class action against the Defendants, including Boston Market and Howard's Towing, alleging that Defendants unlawfully towed vehicles from the Parking Lot and that Howard's Towing unlawfully charged for the return or release of certain vehicles towed from the Parking Lot. Defendants deny all of the Plaintiffs' claims.

### 3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representative(s)" (in this case Dana Cohen, Jack Leon, and James Miller) sue on behalf of themselves and other people who have similar claims, together called a "Class" or "Class Members." The individuals who brought this suit, along with all the Class Members, are called "Plaintiffs." The people and companies being sued (in this case Boston Market Corporation, Howard's Towing and Recovery, LLC, and Howard Szuminsky) are called "Defendants." One court resolves the issues for everyone in the Class – except for those people who choose to exclude themselves from the Class.

### 4. Why is there a Settlement?

The Court has not decided in favor of Plaintiffs or Defendants. Instead, both sides agreed to the Settlement. The Settlement is not an admission that Defendants did something wrong, but rather a compromise to end the lawsuit. By agreeing to settle, both sides avoid the costs, risks, and uncertainties of a trial and related appeals, while providing benefits to members of the Class. The Class Representatives and the attorneys of the Class think the Settlement is best for Class Members.

## WHO IS PART OF THE SETTLEMENT

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

You are a member of the Class and affected by the Settlement if:

- You were nonconsensually towed from the Parking Lot by Howard's Towing between September 24, 2012 and December 27, 2015 and were charged in excess of \$110 total for the return of the towed vehicle, **or** nonconsensually towed from the Parking Lot by Howard's Towing between December 28, 2015 and June 29, 2018 and were charged in excess of \$135 total for return of the towed vehicle.

Specifically *excluded* from the Class are the Court – and any immediate family members of the Court – and individuals who timely and validly request exclusion from the Class.

### 6. Are there exceptions to being included?

If you timely exclude yourself from the Settlement, you are no longer part of the Class and will no longer be eligible to receive payments from the Settlement Fund. The process of excluding yourself is referred to as “opting out” of the Settlement and are described in the Section below titled “Excluding Yourself from the Settlement”.

### 7. I am still not sure if I am included.

If you are still not sure whether you are included, you can contact the Settlement Administrator at [INSERT NUMBER] or visit the Settlement website at [Insert Website] for more information.

## THE SETTLEMENT BENEFITS

### 8. What does the Settlement provide?

Under the Settlement Boston Market will pay TWENTY-EIGHT THOUSAND AND EIGHT HUNDRED U.S. DOLLARS AND ZERO CENTS (\$28,800.00) into a Settlement Fund and Howard's Towing will pay THREE THOUSAND U.S. DOLLARS AND ZERO CENTS (\$3,000.00) in a Settlement Fund for a total of THIRTY-ONE THOUSAND AND EIGHT HUNDRED U.S. DOLLARS AND ZERO CENTS (\$31,800.00). The Settlement Administrator will review Howard's Towing's Towbook System, through which it recorded tows from the Parking Lot, to determine the total number of Class Members. The Settlement Administrator will then divide the Settlement Fund, by the total number of Class Members that have not opted out of the Settlement to determine each Class Member's *pro rata* share of the Settlement Fund (“Portion of the Settlement Fund”). The Settlement Administrator will then distribute to each Participating Class Member their Participating Class Member's Individual Settlement Amount.

### 9. How much will my payment be?

The amount of payment will depend on several factors. Based on Defendants' records, the alleged overpayment charged to Class Members was typically \$65.00-\$75.00. If no Class Member excludes themselves from the Settlement, each Class Member's estimated payment is \$215.00.

## HOW TO GET A PAYMENT

### 10. How can I get a payment?

If you do nothing, you will automatically receive a payment after the Court grants final approval of the Settlement and all appeals are resolved.

### 11. When will I get my payment?

The Court will hold a hearing on [Insert Final Fairness Hearing DATE], to decide whether to

approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved and resolving them takes time, sometimes more than a year. Payments to the Class Members will be made after the Settlement is finally approved and any appeals or other required proceedings have been completed as set forth in the Settlement Agreement. You may visit the Settlement Website for updates on the progress of Settlement.

**12. What am I giving up to receive a payment?**

Unless you exclude yourself from the Settlement, you will be unable to sue, or be part of any other lawsuit, against Defendants or Defendants’ Released Persons (as defined in the Settlement Agreement) relating to the nonconsensual tow of your motor vehicle from the Parking Lot between September 2012 and June 2018. The specific claims that you are giving up are described in the Settlement Agreement, which is available at the Settlement Website.

If you have any questions, you may contact the Settlement Administrator or Class Counsel listed in Question 23 for free, or you can, of course talk to your own lawyer if you have questions about what this means.

If you want to keep your rights to sue or continue to sue Defendants based on claims this Settlement resolves, then you must take steps to exclude yourself from the Class (*See* Questions 13-15).

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**13. How can I opt out of the Settlement?**

To exclude yourself from the Settlement, or “opt out,” you must send a letter by U.S. Mail that includes the information in the bullet points below. If you fail to include this information, the notice of exclusion will not be effective and you will be bound by the Settlement, including all releases.

- The name of this Litigation (*Dana Cohen, Jack Leon, and James Miller, individually and on behalf of all others similarly situated v. UPMC Presbyterian Shadyside, Boston Market Corporation, Howard’s Towing and Recovery, LLC, and Howard Szuminsky, GD-18-012332 (Allegheny Cty. Ct. Com. Pl.)*);
- Your full name, address, email address, telephone number, and signature;
- The words “Request for Exclusion” at the top of the document or a statement in the body of the document requesting your exclusion from the Settlement;
- If you are filing a request for exclusion on behalf of an incapacitated or deceased Class Member for whom you are legally authorized to act, you must include your name, address, telephone number, signature, and relationship to the Class Member, as well as that person’s name and address.

You must mail via First-Class postage prepaid United States mail the completed above-described letter, postmarked no later than **[INSERT OPT-OUT DATE]**, to each of the following addresses:

<b>Settlement Administrator</b>	<b>Class Counsel</b>	<b>Defense Counsel</b>
Analytics Consulting LLC Attn: Boston Market Howard’s Towing Settlement	Kelly K. Iverson Elizabeth Pollock-Avery LYNCH CARPENTER, LLP 1133 Penn Avenue, 5 <sup>th</sup> Floor	Benjamin A. Kift The Lynch Law Group 501 Smith Drive Suite 3

[ADDRESS]

Pittsburgh, PA 15222

Cranberry Twp., PA 16066

Joshua P. Ward  
J.P. Ward and Associates,  
LLC  
201 South Highland Avenue,  
Suite 201  
Pittsburgh, PA 15206

Joseph A. Hudock Jr.  
Summers, McDonnell,  
Hudock, Guthrie & Rauch,  
P.C.  
Ste. 22400  
707 Grant Street  
Pittsburgh, PA 15219

If you ask to be excluded, you will not get any payment as part of this Settlement, and you cannot object to this Settlement. You will not be legally bound by anything that happens in the Settlement and related proceedings. You will be able to sue (or continue to sue) Defendants in the future. If you both object to the Settlement and seek to exclude yourself, you will be deemed to have excluded yourself.

#### 14. Why would I ask to be excluded?

If you already have or had your own lawsuit against the Defendants for towing your vehicle without a license or for overcharging for a nonconsensual tow from the Parking Lot and want to continue with it, you need to ask to be excluded from the Class. If you exclude yourself from the Class—which also means to remove yourself from the Class and is sometimes call “opting out” of the Class—you won’t get any compensation from this Settlement. However, you may then be able to sue or continue to sue the Defendants for allegedly towing without a license or for overcharging for a nonconsensual tow from the Parking Lot. If you exclude yourself, you will not be legally bound by the Court’s judgment in this class action.

If you start your own lawsuit against any of the Defendants for a nonconsensual tow from the Parking Lot after you exclude yourself, you’ll have to hire and pay your own lawyer for that lawsuit, and you’ll have to prove your claims. If you do exclude yourself so you can start or continue your own lawsuit against the Defendants, you should talk to your own lawyer soon, because your claims may be subject to a statute of limitations. You must exclude yourself from this Settlement to continue your own lawsuit. Remember the exclusion deadline is **[insert Opt-Out date]**.

Note that if you exclude yourself from this lawsuit and in the future, you park in the Parking Lot, the changes made to the Defendants’ policies and practices regarding the fee charged for towing vehicles would still apply to you.

#### 15. If I exclude myself, can I get money from this Settlement?

No. If you exclude yourself, you are not entitled to a payment under the Settlement.

### THE LAWYERS REPRESENTING THE CLASS

#### 16. Do I have a lawyer in this case?

Yes. The Court decided that Kelly K. Iverson, of the law firm Lynch Carpenter, LLP, and Joshua P. Ward, of the law firm J.P. Ward and Associates, LLC, are qualified to represent you and all Class Members. Together these attorneys and their firms are called “Class Counsel.” They are experienced in handling similar cases against other companies and individuals. More information about these law firms, their practices, and their lawyers’ experience is available at [www.lcllp.com](http://www.lcllp.com)



and [www.jpward.com](http://www.jpward.com). You will not be charged individually for these lawyers.

#### 17. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf as a Class Member. If you want your own lawyer, you may hire one, but you will have to pay that lawyer. For example, you could ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

#### 18. How will the lawyers and individuals representing the class be paid?

Class Counsel worked on a contingent basis, which means that they would receive a fee only if the lawsuit was successful. None of the lawyers have yet received any payment for their time or expenses. Class Counsel intends to ask the Court to approve an award of up to \$34,800.00 to be paid separately by Defendants, as attorneys' fees, costs, and expenses to compensate them for their time, the financial risk they understood, and the out-of-pocket costs that they advanced. Under the Settlement, Defendants agreed that \$32,800.00 of the fees and expenses will be paid by Boston Market and \$2,000.00 will be paid by Howard's Towing. Defendants have agreed not to object to Class Counsel's request for fees in this amount.

The Class is represented by three named individuals, Dana Cohen, Jack Leon, and James Miller (the "Class Representatives"). In addition to the benefits the Class Representatives will receive as members of the Class – and subject to the approval of the Court – Boston Market has agreed to pay a service award of \$1,500.00 to each of the Class Representatives for the efforts that they have expended on behalf of the Class. The amount of the service awards approved by the Court will be paid separately by Boston Market.

The Court will determine whether to approve the amount of fees and costs and expenses requested by Class Counsel and the proposed service awards at the Final Approval Hearing scheduled for **[INSERT FINAL APPROVAL HEARING DATE]**. Class Counsel will file an application for fees, expenses, and services awards in advance of the Final Approval Hearing and the application will be available on the Settlement website.

## OBJECTING TO THE SETTLEMENT

#### 19. How do I tell the Court that I do not like the Settlement?

If you are a Class Member, you can object to the Settlement if you do not think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. The Court will consider your views. If you both object to the Settlement and seek to exclude yourself, you will be deemed to have excluded yourself and your objection will be deemed null and void.

Your objection must be in writing, and must include:

- the name of the Litigation: The name of the Litigation: *Dana Cohen et. al. v. Boston Market Corporation et. al.*, GD-18-012332, in the Court of Common Pleas of Allegheny County, Pennsylvania, or a decipherable approximation;
- the full name of the objector and full name, address, email address, and telephone number of any person acting on the objector's behalf;
- all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
- a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

- such written statement must be filed with the Court and served on counsel for the parties no later than the Objection Date.

Any objection must be either filed electronically with the Court or mailed to the Clerk of Court, Class Counsel, *and* all Defendants’ Counsel at the addresses set forth below. The objection must be filed with the Court – or if mailed it must be postmarked – no later than [INSERT OBJECTION DEADLINE].

<b>Court</b>	<b>Class Counsel</b>	<b>Defense Counsel</b>
Clerk of Court Allegheny County Courthouse Room 114 436 Grant Street Pittsburgh, PA 15219	Kelly K. Iverson Elizabeth Pollock-Avery LYNCH CARPENTER, LLP 1133 Penn Avenue, 5 <sup>th</sup> Floor Pittsburgh, PA 15222  Joshua P. Ward J.P. Ward and Associates, LLC 201 South Highland Avenue, Suite 201 Pittsburgh, PA 15206	Benjamin A. Kift The Lynch Law Group 501 Smith Drive Suite 3 Cranberry Twp., PA 16066  Joseph A. Hudock Jr. Summers, McDonnell, Hudock, Guthrie & Rauch, P.C. Ste. 22400 707 Grant Street Pittsburgh, PA 15219

In addition, any Class Member that objects to the proposed Settlement may be required to appear for a deposition regarding the grounds for their objection and must provide, along with the objection, the dates when the objector will be available to be deposed up until five days before the Final Approval Hearing.

**20. What is the difference between objecting and excluding myself/opting out?**

Objecting is telling that Court that you do not like something about the Settlement and providing the reasons and legal basis as to why do you not like it. You can object to the benefits provided by the Settlement or other terms of the Settlement only if you stay in the Class. Excluding yourself or “opting out” is telling the Court that you do not want to be included in the Class. If you exclude yourself, you have no basis to object to the Settlement and related releases because the Settlement no longer affects you.

**THE COURT’S FINAL APPROVAL HEARING**

**21. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing on [INSERT FINAL APPROVAL HEARING DATE], in Courtroom 820 before Judge Philip A. Ignelzi of the Court of Common Pleas of Allegheny County, Pennsylvania, City-County Building, 414 Grant Street, Pittsburgh, PA 15219, or at such other time, location, and venue (including remotely by zoom) as the Court may order. This hearing date and time may be moved. Please refer to the Settlement Website for notice of any changes.

By no later than [insert date], Class Counsel shall file a motion for final approval of the Settlement.

Objectors, if any, shall file any response to Class Counsel’s motion no later than [insert date]. By no later than [insert date], responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel’s application for attorneys’ fees, costs, and expenses, and for Service Awards shall be filed

At the Final Approval Hearing, the Court will consider, among other things, whether the Settlement is fair, reasonable, and adequate; how much Class Counsel will receive as attorneys’ fees, costs, and expenses; and whether to approve service awards to the Class Representatives. If there are objections, the Court will consider them. The Court will listen to people at the hearing who file in advance a timely notice of their intention to appear. At the Final Approval Hearing, the court will decide whether to approve the Settlement. However, there is no deadline by which the Court must make its decision.

#### 22. Do I have to attend the hearing?

No. Class Counsel will answer questions that the Court may have. You are welcome, however, to come at your own expense. If you submit an objection, you do not have to come to the hearing. As long as you submitted your objection timely and in accordance with the requirements for objecting set out in the Settlement, the Court will consider it. You may also pay your own attorney to attend the hearing, but it is not required.

## GETTING MORE INFORMATION

#### 23. Are more details available?

Visit the website, [Insert Website], where you will find more information, including a copy of the Settlement Agreement.

You may contact the Claims Administrator, Analytics Consulting LLC, at [Insert number] or by writing to: Analytics Consulting, LLC, Attn: Boston Market Howard’s Towing Settlement, [Address]

You may also speak to one of the lawyers by calling (412) 322-9243 or by writing to: Boston Market Class Action, Lynch Carpenter, LLP, Attn: Kelly K. Iverson, 1133 Penn Avenue, 5<sup>th</sup> Floor, Pittsburgh, PA 15222.

**Please do not contact the Court or Defendants with questions about the Settlement.**

# Exhibit 4

Court Approved Legal Notice  
*Dana Cohen et. al. v. Boston Market Corporation et. al.,*  
GD-18-012034 (Allegheny Cty. Pa. Ct. Com. Pl.)

You have been identified as an individual whose vehicle was non-consensually from the parking lot located at 5200 Baum Boulevard, Pittsburgh, PA 15224 by Howard's Towing and Recovery LLC

**YOU MAY BE ENTITLED TO MONETARY COMPENSATION UNDER A CLASS ACTION SETTLEMENT**

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

***THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.***

**For More Information on the Settlement, Deadlines, Your Potential Recovery, and Your Ability to Object or Opt-Out visit or call:**

[WEBSITE]  
1-xxx-xxx-xxxx

*Boston Market Howard's Towing Settlement*  
Settlement Administrator  
P.O. Box \_\_\_\_\_  
CITY, ST ZIP \_\_\_\_\_

«Barcode»  
Postal Service: Please do not mark barcode

«ClaimID» «MailRec»

«First 1» «Last 1»  
«CO»  
«Addr2»  
«Addr1»  
«City», «ST» «Zip» «Country»

Boston Market Howard's Towing Settlement

A Settlement has been proposed in a class action lawsuit against Boston Market Corporation, ("Boston Market") and Howard's Towing and Recovery, LLC and Howard Szuminsky (collectively "Howard's Towing") (and together with Boston Market, "Defendants") alleging that Defendants charged more than permitted under Ordinance for nonconsensual tows from the Boston Market Parking Lot and asserts claims under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat § 202-1, *et. seq.*, the Pennsylvania Fair Credit Extension Uniformity Act ("PaFCEUA"), 73 Pa. Stat. § 2270.1, *et seq.*, and various common law causes of action.

**Who is Included?** Defendants' records show that you had a vehicle towed from the Parking Lot and the charge was more than the amount set forth in the Ordinance. You are a Class Member if you were nonconsensually towed from the Parking Lot by Howard's Towing between September 24, 2012 and December 27, 2015 and were charged in excess of \$110 total for the return of the towed vehicle, or nonconsensually towed from the Parking Lot by Howard's Towing between December 28, 2015 and June 29, 2018 and were charged in excess of \$135 total for return of the towed vehicle.

**What does the Settlement Provide?** Under the Settlement, Defendants will pay \$31,800 into a Settlement Fund, from which Class Members will be paid *pro rata*. The amount of your individual payment will depend on several factors. Based on the Defendants' records, the alleged overpayment charged to Class Members was typically \$65-\$75. If no Class Member excludes themselves from the Settlement, each Class Member's estimated payment should be approximately \$215. The Settlement also provides for a Service Award of \$1,500 to each named Plaintiff separate and apart from the Settlement Fund; for payment of attorneys' fees, costs, and expenses up to \$34,800 to be paid separate and apart from the Settlement Fund, subject to court approval; and for payment of the settlement administration costs separate and apart from the Settlement Fund.

**Your Legal Rights and Options:** (1) DO NOTHING AND RECEIVE AUTOMATIC PAYMENT: If you do nothing, you will receive a cash payment from the Settlement Fund equal to *pro rata* share of the Settlement Fund; (2) EXCLUDE YOURSELF: If you ask to be excluded, you will not receive a cash payment, but you may be able to file your own lawsuit against Howard's Towing, Howard Szuminsky, or Boston Market for the same claims. This is the only option that leaves you the right to file your own lawsuit for the claims that are being resolved by the Settlement. In order to be effective, a request to be excluded from the Settlement must contain all the information required by the Settlement; or (3) OBJECT: You can remain in the Class and file an objection telling the Court why you believe the Settlement should not be approved. If your objections are overruled, you will be bound by the Settlement.

**The Fairness Hearing:** The Court will hold a Fairness hearing in this case on [Date and Time] in Courtroom 803 of the Allegheny County Courthouse to consider whether to approve the Settlement, including the request for service payments and attorneys' fees and expenses, as well as any objections. You or your lawyer may ask to appear at the hearing at your own expense and request to be heard.

**Getting more information.** A Detailed Notice, the Settlement Agreement, and other case documents are available at [Website]; by calling 1-xxx-xxx-xxx, or by writing to the "Boston Market Howard's Towing Settlement Administrator" at P.O. Box \_\_\_\_\_, CITY, STATE ZIP \_\_\_\_\_ or emailing info@\_\_\_\_\_ .com.

**CERTIFICATE OF SERVICE**


I hereby certify that on July 3, 2023, the foregoing was served by email on the following:

Joseph A. Hudock, Jr.  
Jeffrey C. Catanzarite  
Summers McDonnell Hudock Guthrie & Rauch, LLC  
Gulf Tower  
707 Grant Street, Suite 2400  
Pittsburgh, PA 15219  
jhudock@summersmcdonnell.com  
jcatanzarite@summersmcdonnell.com

*Counsel for Howard's Towing and Recovery, LLC and Howard Szuminsky*

Benjamin A. Kift  
The Lynch law Group  
501 Smith Drive  
Suite 3  
Cranberry Twp., PA 16066  
Bkift@lynchlaw-group.com

*Counsel for Boston Market Corporation*



Kelly K. Iverson