

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



In the Matter of
Insomnia Cookies, LLC

SETTLEMENT AGREEMENT

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and Insomnia Cookies, LLC (“Insomnia Cookies” or the “Company”) (collectively, the “Parties”) hereby enter into this Settlement Agreement (“Agreement”), and agree as follows:

I. THE PARTIES

1. The District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government of the United States. D.C. Code § 1-102. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil penalties, costs, attorneys’ fees, and equitable relief for violations of the District’s Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*, Wage Payment and Collection Act (“WPCL”), D.C. Code § 32-1301, *et seq.*, and Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01, *et seq.* Pursuant to D.C. Code § 28-3909, the Attorney General for the District of Columbia is authorized to bring civil actions seeking, inter alia, civil penalties, damages, attorney’s fees, and equitable relief under the Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

2. Insomnia Cookies, LLC is a Pennsylvania corporation with a business address of 1 S Broad Street, Suite 1710, Philadelphia, PA 19102.

II. COVERED CONDUCT

3. The District investigated Insomnia Cookies' compliance with the District's Sick and Safe Leave Act ("SSLA"), D.C. Code § 32-531.01, *et seq.*, the consumer protection provisions of the District's Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*, and the District's Minimum Wage Revision Act ("MWRA"), D.C. Code § 32-1001, *et seq.*, and Wage Payment and Collection Law ("WPCL"), D.C. Code § 32-1301, *et seq.*, from January 1, 2019 to the present.

4. Specifically, the District alleges that:

a. Between 2020 and 2022, Insomnia Cookies solicited tips from consumers via Insomnia Cookies' website, for delivery orders that were fulfilled by third-party delivery drivers who had no employment relationship with Insomnia Cookies.

b. Insomnia Cookies was responsible for ensuring that these tips were passed through to the delivery drivers who fulfilled those orders.

c. For 2,308 individual orders, Insomnia Cookies inadvertently did not pass through the tips to the third-party delivery drivers, instead retaining the tips in violation of the CPPA.

5. After the District had commenced its investigation, Insomnia Cookies voluntarily returned a total of \$3,231.44 in tips corresponding to 737 orders, but was unable to remediate a total of \$6,435.40 in tips corresponding to 1,571 orders. The District is not making allegations that the Company's failure to provide tips to third-party delivery drivers was undertaken in bad faith.

6. The District further alleges that, from January 1, 2019 to the present, Insomnia Cookies at times interfered with employees' ability to use accrued paid sick and safe leave, by failing to process oral paid leave requests, in violation of the SSLA.

7. The Company denies the District's allegations of wrongdoing set forth in Paragraphs 4, 5, and 6, and denies that its practices violated District law or any other laws. Nothing contained in this Settlement Agreement is or may be construed to be an admission by the Company or Releasees (as defined below) of any violation of law or regulation, any other matter of fact or law, or any liability or wrongdoing.

8. To avoid delay, uncertainty, inconvenience, and the expense of any protracted litigation or further investigation, subpoenas or other actions, the Parties have reached a full and final Settlement Agreement as set forth below.

9. The "Effective Date" of this Agreement shall be the last date upon which any party executes the Agreement.

III. PAYMENT TERMS

10. Insomnia Cookies agrees to pay, in the manner set forth below, a total of fifty nine thousand two hundred thirty five dollars and twenty cents (\$59,235.20) (the "Total Settlement Amount"). The Total Settlement Amount consists of (a) a "Restitution Share" equaling twenty five thousand seven hundred sixty nine dollars and twenty cents (\$25,769.20) to be paid to affected workers and consumers, and (b) a "Penalty Share" equaling thirty three thousand four hundred sixty six dollars (\$33,466) to be paid to the District. The Total Settlement Amount shall be paid out in the following manner:

a. **Restitution Share.** Insomnia Cookies shall pay the Restitution Share as follows:

- i. *Initial Payment of Restitution Share via Third-Party Delivery Partner.* Within sixty (60) calendar days after the Effective Date, Insomnia Cookies shall pay six thousand four hundred sixty two dollars and eighty eight cents (\$6,462.88) to affected workers previously identified by its Third-Party Delivery Partner, via the Third-Party Delivery Partner. These payments shall be, to each individual, twice the amount previously remediated to that individual by Insomnia Cookies via its Third-Party Delivery Partner. Amounts designated for previously-identified individuals who can no longer be paid via the Third-Party Delivery Partner shall be included in the Remainder of the Restitution Share to be paid to the District in accordance with Paragraph 10(a)(ii).
- ii. *Payment of Remainder of Restitution Share to the District.* Within ninety (90) calendar days after the Effective Date, Insomnia Cookies shall pay the District the Remainder of the Restitution Share, which shall be nineteen thousand three hundred six dollars and thirty two cents (\$19,306.32), plus any amount that cannot be paid in accordance with Paragraph 10(a)(i). Any funds remaining with the District pursuant to this term may be used by the District for any lawful purpose, including but not limited to payment in restitution to current and former Insomnia Cookies workers or consumers; payment applied to the District's restitution fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; payment to the litigation support fund; or for other uses permitted by District law, at the sole discretion of the Attorney General for

the District of Columbia. Insomnia Cookies agrees to provide reasonable cooperation to the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.

- b. **Penalty Share.** Insomnia Cookies shall pay the Penalty Share as follows:
 - i. Within sixty (60) calendar days after the Effective Date, Insomnia Cookies shall make a payment to the District in the amount of thirty three thousand four hundred sixty six dollars (\$33,466).
 - ii. Payments made pursuant to the Penalty Share may be used for any lawful purpose, including, but not limited to, deposit to the District's litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. Insomnia Cookies agrees to provide reasonable cooperation to the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.
- c. **Delivery.** Payments made by Insomnia Cookies to the District pursuant to this paragraph shall be in the form of a certified or cashier's check made payable to the "D.C. Treasurer" and mailed with tracking information requested, sent by overnight courier with tracking information requested, or hand delivered to Mina Kasama, Staff Assistant, Public Advocacy Division, Office of the Attorney General for the District of Columbia, 400 Sixth Street, N.W., 10th Floor, Washington, D.C. 20001.

- d. **Taxes.** The Company and the District will be separately responsible for any tax reporting obligations with respect to any payments to individuals that either side makes under the settlement.

IV. INJUNCTIVE TERMS

11. **Compliance with District Law.** Insomnia Cookies will comply with the CPPA and ensure that all tips solicited in the District are promptly distributed to the workers who earn them.

12. **Corrective Action.** For a period of two (2) years from the Effective Date, if Insomnia Cookies becomes aware that tips solicited in the District are not all being promptly distributed to the workers who earn them, Insomnia Cookies will take remedial action within fourteen (14) business days to ensure the payment of tips to affected workers and give notice to the District. Insomnia Cookies shall submit this notice pursuant to Paragraph 24 of this Agreement not later than thirty (30) calendar days of becoming aware that tips solicited in the District are not being promptly distributed to the workers who earn them.

13. **Changes to Personnel Policy Regarding Sick Leave Requests.** Insomnia Cookies will identify a dedicated contact on Insomnia Cookies' People Team charged with entering and approving District employees' oral requests for unforeseeable paid sick leave. Insomnia Cookies will instruct District managers to reach out to that contact when Insomnia Cookies employees orally request unforeseeable paid sick leave.

14. **SSLA Training.** Within one hundred (100) calendar days of the Effective Date, Insomnia Cookies will provide training regarding the SSLA to District employees, including managers; thereafter, Insomnia Cookies will provide similar training to future District employees, including managers, at the time of hiring. This training will address:

- a. covered events under the SSLA;
- b. SSLA protections for orally-requested unforeseeable paid sick leave pursuant to D.C. Code § 32.531.03; and
- c. how to use Insomnia Cookies' CookieTime portal to request paid sick leave.

15. **Changes to Written Sick Leave Policy.** Insomnia Cookies agrees that, to the extent that there is written language—including in employee training materials, handbooks, employment agreements, or within the CookieTime web portal—that states that requests for time off must be submitted a certain amount of time in advance, such language will be amended to clarify explicitly that:

- 1) the advance notice policy only applies to sick leave when the absence is “foreseeable in advance,” and that “a request for sick leave will be paid if it is submitted in writing at least ten (10) calendar days in advance, or as early as possible if 10 calendar days advance notice is not possible”;
- 2) “if the need to request paid sick leave is unforeseeable, as in the event of a sudden illness or other unpredictable covered event, paid leave will be provided if either a written or oral request for paid leave is communicated to the manager on duty prior to the work shift for which the paid leave is requested”; and
- 3) “in the case of an emergency, sick leave will be paid if the employee requests paid sick leave orally or in writing prior to the start of the next work shift after the one missed due to emergency, or within twenty four (24) hours of the onset of the emergency, whichever is sooner.”

16. **Quarterly Written Notice to Managers Regarding SSLA Compliance.** For a period of two (2) years from the Effective Date, Insomnia Cookies will quarterly email District

managers a reminder of their obligation to honor oral requests for paid sick leave consistent with D.C. Code § 32.531.03.

17. **Notice of Settlement to Insomnia Cookies Management.** For a period of two (2) years from the Effective Date, Insomnia Cookies shall ensure that its current and future principals, officers, directors, and managers who have managerial authority with respect to the subject matter of this Settlement Agreement are aware of the obligations of Insomnia Cookies under this Agreement.

V. RELEASE

18. Upon payment by Insomnia Cookies of the Total Settlement Amount, the District releases Insomnia Cookies and its direct and indirect past, present, and future parent corporations, subsidiaries, predecessors, business units, divisions, affiliates, partners, joint venturers, insurers, reinsurers, professional employment organizations, representatives, successors, and assigns, and their current and former employees, attorneys, officers, owners, members, directors, and agents thereof, both individually and in their business capacities, and their employee benefit plans and programs and their administrators and fiduciaries, both individually and in their business capacities, and any individual or entity that could be jointly liable with any of the foregoing (collectively, “Releasees”) from any and all civil claims that the Attorney General could have brought under Title 32 of the D.C. Code or the CPPA arising out of the Covered Conduct from 2019 through the Effective Date. The foregoing release shall not affect the District’s right to take appropriate enforcement action against Insomnia Cookies with respect to the payment terms and injunctive terms set out in Sections III and IV of this Agreement, nor shall it, or anything in this Agreement, affect the District’s right to bring any enforcement action for conduct that is not specifically released herein.

VI. ADDITIONAL TERMS

19. **Enforcement.** If the District has a good-faith belief that Insomnia Cookies has violated the payment or injunctive terms of this Agreement, the District shall provide written notice (the “Notice”) to Insomnia Cookies, through counsel, by email at least thirty (30) calendar days prior to taking any enforcement action against Insomnia with respect to the Agreement. The Notice shall describe the alleged violation in sufficient detail to allow Insomnia Cookies to investigate and, if necessary, correct the alleged violation. Following the issuance of the Notice, the Parties may attempt to resolve the dispute without enforcement action, provided that nothing in this paragraph prevents the District from taking enforcement action with respect to the Agreement or new conduct in violation of the Agreement following expiration of the thirty (30)-day period. Should a correction of the alleged violation take longer than thirty (30) calendar days, then the District and Insomnia Cookies will meet-and-confer in good faith in an attempt to agree upon a reasonable time period for Insomnia Cookies to investigate and correct the violations, if any.

20. **No concession that claims were not well-founded.** The District’s agreement to enter into this Agreement does not constitute, and shall not be construed as, a concession that its allegations were not well-founded.

21. **No admission of wrongdoing or liability.** Insomnia Cookies’ agreement to enter into this Agreement does not constitute, and shall not be construed as, an admission of any wrongdoing or liability.

22. **Full and complete terms.** This Agreement represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by the Parties, neither prior versions of this Agreement nor prior versions of any of its terms may be introduced for any purpose

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

23. This Agreement shall be considered effective and fully executed on the Effective Date. This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

24. All notices and reports sent pursuant to this Agreement shall be provided to the following addresses via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
Graham.Lake@dc.gov

Counsel for the District of Columbia

Mina M. Wood
Douglas J. Klein
Jackson Lewis P.C.
666 Third Avenue, 29th Floor
New York, N.Y. 10017
Mina.Wood@jacksonlewis.com
Douglas.Klein@jacksonlewis.com

Counsel for Insomnia Cookies, LLC

25. If any clause, provision, or section of this Agreement shall, for any reason, be held illegal, invalid, or unenforceable, excluding the release set forth in Paragraph 18, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this

Agreement and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

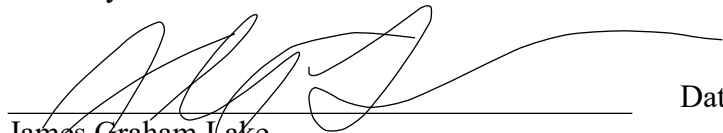
26. Nothing in this Agreement shall be construed as relieving Insomnia Cookies of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

27. Nothing in this Agreement may be deemed as creating rights in individual or entity third parties, other than third-party Releasees as to the release.

28. Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the 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 to the fullest extent permitted by law.

29. This Agreement, its interpretation and any enforcement of its provisions shall be governed by the laws of the District of Columbia.

BRIAN L. SCHWALB
Attorney General for the District of Columbia



James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Date:

12/10/24

Counsel for the District of Columbia

Douglas J. Klein

Date: 12/4/2024

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