

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Michael Tate, Joseph Shuster, Lyle
Evanson and John Ayers, individually
and on behalf of all other individuals
similarly situated,

Civil File No. 09-cv-02076 *MJD/JJG*

Plaintiffs,

vs.

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
REIMBURSEMENT OF EXPENSES,
AWARD TO PLAINTIFFS AND
AWARD OF ATTORNEYS' FEES**

Restaurant Technologies, Inc.,
Parthenon Capital LLC, Jeffrey R.
Kiesel, John C. Rutherford, Jonathan
O. Grad, Zachary F. Sadek, Philip A.
Clough and Robert E. Weil,

Defendants.

INTRODUCTION

Plaintiffs Michael Tate, Joseph Shuster, Lyle Evanson and John Ayers (collectively "Plaintiffs"), submit this Memorandum in support of their motion for reimbursement of expenses, an incentive award to the Plaintiffs and an award of attorneys' fees. This motion is submitted pursuant to the Order Preliminarily Approving Settlement of Class Action and Approving Form and Manner of Notice ("Preliminary Approval Order") issued by the Court on September 30, 2010. This motion is subject to the Court's final approval of the settlement at a Final Settlement Hearing scheduled for November 29, 2010.¹

¹ A formal motion and supporting papers seeking final approval are anticipated to be submitted on November 19, 2010 in accordance with the timeframe set out in the

As reflected in the Court's extensive file, this settlement will result in certain former shareholders in Restaurant Technologies, Inc. ("RTI") receiving a minimum of \$5.5 million, assuming RTI remains creditworthy. In the absence of this litigation, that value would not have been received. As discussed below, the litigation involved substantial risk and provided a substantial benefit which should permit Plaintiffs to have their expenses reimbursed, an award to the named Plaintiffs for their efforts and an award of reasonable attorneys' fees.

BACKGROUND

A. The Prelude to the Filing of the Lawsuit.

In December 2008, RTI common shareholders received a letter from RTI in which RTI claimed that their common stock was worthless. The letter was received against a six-year backdrop of RTI having enjoyed considerable revenue growth and national recognition for its innovative technology. Many recipients of the letter were shocked.

In early 2009, Plaintiff Michael Tate ("Tate") (who had invested several hundred thousand dollars in RTI) began to look for legal counsel to determine why and how the

Preliminary Approval Order. That motion is, in part, conditioned upon the receipt of additional information from the Claims Administrator based upon the returns from the mailing of the Notice of Proposed Settlement of Class Action and Hearing Regarding Settlement ("Class Notice"). See Affidavit of Robert C. Moilanen, dated November 1, 2010 ("Moilanen Aff."), Ex. A. A cutoff date of November 12, 2010 was set as a responsive date for the Class Notice for submitting Proofs of Claim, for exclusion from the Class or for objecting to the terms of the settlement. Plaintiffs will be in a position to seek, or not seek, final approval after November 12, 2010 based upon the number of people submitting Proof of Claim forms, the number of people, if any, electing to exclude themselves from the Class and the nature and scope of any objections received. In connection with the papers to be submitted on November 19, 2010, Plaintiffs will submit a proposed Order regarding the reimbursement of expenses, the awarding of incentive payments and a fee for the attorneys, if appropriate to do so.

RTI common stock he had relied upon for his retirement had become worthless. Tate sought counsel from several law firms which declined to engage in representation before approaching Anthony Ostlund Baer & Louwagie P.A. (“AOBL”). AOBL agreed to investigate the matter. Tate then organized several meetings designed to provide counsel with background information about RTI, its history of operations and growth and its capital structure. Plaintiff Joseph Shuster (“Shuster”), along with others, also participated in those meetings.

In late April 2009, it was decided that there was insufficient information available to determine the availability of any legal claims, but that further investigation was appropriate. Tate, Shuster, Plaintiff Jack Ayers (“Ayers”) and other RTI shareholders then retained AOBL to request RTI’s books and records. Tate, Schuster, Ayers and the other shareholders made the request so that they could assess whether the purported losses in the value in RTI stock were from explainable circumstances or were the result of misfeasance or malfeasance on the part of RTI’s officers and directors. However, just prior to service of what was anticipated to be a standard books and records request, all RTI shareholders received over 350 pages of Proxy materials announcing a complete recapitalization of RTI and inviting inquiries of RTI officers. The proposed recapitalization called for RTI common shareholders to receive a nominal 13¢ per share and for certain preferred shareholders to receive only 17% of their original investment. By contrast, other preferred shareholders would receive 100% of their investment, plus

additional amounts reflecting “accreted value.”² In light of the development, the books and records request made by AOBL on behalf of Tate, Shuster, Ayers and others focused on the proposed recapitalization as well as historic information which could explain how RTI, which enjoyed solid prospects and revenue growth, had purportedly deteriorated so dramatically in value. In the days leading up to the shareholder vote on the planned recapitalization (and during a time when many common shareholders were submitting completed proxy materials), RTI produced approximately 4,000 pages responsive to the books and records request.

In light of the timing of the production and based upon information gleaned from the materials, Plaintiffs requested RTI delay the shareholder vote in order to permit further analysis of the produced materials. RTI declined to delay the voting or, ultimately, the closing of the recapitalization. Approximately 40% of RTI’s common shareholders voted against the merger. Nevertheless, the recapitalization went forward, ultimately closing on June 24, 2010. In early July 2009, Plaintiffs encouraged Defendants to avoid litigation by providing greater consideration to the RTI common shareholders who had received virtually nothing (13¢ per share) in the course of the recapitalization. Defendants declined and litigation ensued.

² The recapitalization transaction which was challenged in this proceeding was very complex. The three law firms who drafted and negotiated the recapitalization collectively billed RTI approximately \$1 million for transactional work conducted during a four month period in the spring of 2009.

B. This Litigation and the Appraisal Action.

In early July 2009, Tate, Shuster and Ayers entered into a legal services agreement with AOBL, agreeing to pursue class action litigation and to meet their fiduciary obligations as putative class representatives.³ Tate, Shuster and Ayers also agreed to pay all out-of-pocket costs incurred in the litigation. In accordance with the legal services agreement, Lockridge Grindal Nauen P.L.L.P. was added as co-counsel.

A Complaint was filed in state court on July 23, 2009. The Complaint asserted breaches of fiduciary duty as well as claims that the recapitalization had not resulted in a fair price because the recapitalization process had not been conducted in a fair fashion. Defendants vehemently denied any allegation of wrongdoing, as they had done from the very inception of the case, and promptly removed the matter to federal court.

After removal, the case was the subject of numerous motions, including a motion to dismiss, a motion for partial summary judgment, a motion to assert punitive damages, a motion for class certification and several discovery motions. Each of these motions was fully briefed and argued. During the spring of 2010, the Complaint was amended to bring into the Class certain RTI preferred shareholders and holders of options of RTI. In addition, Plaintiff Lyle Evanson ("Evanson") was added as a named Plaintiff. Further, the Amended Complaint named two other defendants, Parthenon Capital, LLC and Zachary F. Sadek.

Discovery activities in the case were extensive. Over 300,000 pages of documents were collectively produced by the named parties and fourteen third-parties. The parties

³ These legal services agreements will be made available to the Court if requested.

exchanged over 1,000 requests for admissions and numerous interrogatories. More than thirty individuals in Minneapolis, Chicago, Boston, Los Angeles, and Little Rock were deposed. The activities leading to the recapitalization, as well as the recapitalization itself, were thoroughly explored by counsel, the named Plaintiffs and retained experts.

In addition to the pending action in Minnesota, thirteen Class members holding approximately 400,000 shares of RTI common stock retained AOBL to commence an appraisal action in the Chancery Court for the State of Delaware. This action was commenced in October 2009. It was anticipated that Defendants would argue that an appraisal remedy was the only remedy available to Plaintiffs and, in the event that argument succeeded in federal court, exercising and preserving certain appraisal rights seemed prudent. At the same time, Plaintiffs maintained that Minnesota should be the main jurisdiction in which the matter was litigated for a variety of reasons, including costs. Therefore, Plaintiffs pushed discovery in the Minnesota action in the hope that the action in Delaware would be stayed while discovery and a trial proceeded here.⁴

C. The Settlement.

At the end of 2009, before costly deposition discovery commenced, Plaintiffs urged Defendants to consider mediating the dispute, but Defendants declined. Finally, in June 2010, as the parties were approaching the end of discovery, the parties reached an agreement to mediate the dispute.

⁴ Ultimately, in connection with the Delaware actions, Defendant RTI did attempt to commence discovery, but Plaintiffs prevailed upon the Chancery Court in Delaware to stay discovery in that proceeding. It has now been agreed that the appraisal action will also be dismissed as part of the settlement, if final approval is granted by the Court.

A face-to-face mediation was initially conducted by former Hennepin County Judge Richard Solum on June 28, 2010. The parties remained far apart during the initial mediation meeting. Judge Solum continued to push the parties toward settlement in the subsequent weeks. Finally, Judge Solum believed there was a deadlock and issued a “Mediator’s Proposal” which the parties had to accept or reject by August 31, 2010. Just prior to the deadline, both parties accepted the proposal made by Judge Solum. However, because of the complexity of the Mediator’s Proposal, a number of issues required further negotiation and resolution in order to effectuate the terms which Judge Solum had proposed.

On September 27, 2010, the parties entered into a formal Stipulation of Settlement. The essential terms set forth in the Stipulation of Settlement include:

1. Defendants would pay the Class \$2.55 million cash; \$1.275 million of this amount would be put into trust upon preliminary approval of the Settlement and \$1.275 million would be paid into trust upon final approval of the Settlement;
2. Defendants represented to Plaintiffs that RTI had retained an investment banking firm to assist in its efforts to sell the company and that it intends to pursue a sales effort in good faith. While there was no guarantee a sale will be consummated nor was there a guaranteed timetable for such a sale, based in part upon the representation of a possible sale:
 - a. RTI agreed to issue a \$1.55 million note payable to the Class by June 1, 2013 or upon the sale of RTI, whichever is earlier, which note would be subordinated to certain pre-existing RTI debts and would bear a 3% interest rate;
 - b. RTI would also issue a \$1.40 million note payable to the Class (also subordinated to certain pre-existing debt and paying 3% interest rate), which note will be payable the earlier of the closing of an RTI sale or June 1, 2014. This

note would be deemed fully satisfied in the event of a sale closing before June 1, 2013 for a gross sales price in excess of \$150 million, in which case the Class (as designated) would be paid 7% of all amounts over \$150 million in connection with a sale in full satisfaction of such note. However, in no event would the Class receive less than the \$1.40 million amount reflected in the note and may receive additional sums if the sale of RTI occurs before June 1, 2013 and the gross sales price for RTI exceeds \$170 million.⁵

The settlement creates an anticipated minimum payment to the Class of \$5.5 million over time with a potential upside in the event RTI is sold for in excess of \$170 million. The settlement also calls for an ongoing role by the named Plaintiffs and their counsel in monitoring the sales process and in ensuring that RTI takes no action which would impair the Notes. The settlement also clears the way for a potential sale of RTI and aligns the parties' interest in achieving the highest possible value in such a sale.

On September 30, 2010, the Court granted preliminary approval and ordered the mailing of Class Notice to inform class members of the settlement and their rights. From the date of the Court's issuance of the Preliminary Approval Order until October 12, 2010, the parties continued to negotiate the precise language of the Notes which comprised the settlement. Ultimately, Judge Solum rendered a ruling on the language in the Notes on October 15, 2010. The Class Notice was mailed by the Claims

⁵ Each of the Notes set forth in Paragraphs 2a and 2b above are subject to "subordination" to the interests of RTI's primary lender. The scope of that subordination interest was in dispute after the execution of the Stipulation of Settlement and resulted in a further arbitration proceeding before Judge Solum as to the terms of the Notes. The above terms have now been clarified so that if a sale occurs for less than the outstanding indebtedness of the primary lenders, the Notes could potentially not be paid at the time of sale. The Notes were posted on the website referred to in the Class Notice prior to the receipt of the Class Notice by RTI shareholders.

Administrator and information regarding the settlement was immediately made available at <http://www.aoblaw.com/news/newsline.html>. See Moilanen Aff., Ex. A.

DISCUSSION

I. SETTLEMENTS ARE FAVORED.

Plaintiffs intend to submit a Memorandum on November 19, 2010 describing the mailing of the Class Notice and the results received by the Claims Administrator as a result of the mailing. Plaintiffs hope to be in a position to seek final approval at that time.⁶

The settlement of class actions is to be encouraged. *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004); *see also Williams v. First Nat'l Bank of Pauls Valley*, 216 U.S. 582, 585 (1910) (“It is long settled that “compromises of disputed claims are favored by the courts.”); *accord MSK EyEs Ltd. v. Wells Fargo Bank, Nat'l Ass'n*, 546 F.3d 533, 541 (8th Cir. 2008) (noting “our strong public policy of encouraging settlement”) (citation and internal quotes omitted); *Thompson v. Edward D. Jones & Co.*, 992 F.2d 187, 191 (8th Cir. 1993) (noting “the paramount policy of encouraging settlements”) (citation and internal quotes omitted); *Little Rock Sch. Dist. v. Pulaski County Special Sch. Dist. No. 1*, 921 F.2d 1371, 1383 (8th Cir. 1990) (“The law strongly favors settlements. Courts should hospitably receive them. This may be especially true in . . . protracted, highly divisive, even bitter litigation[.]”); *United States v. Bliss*, 133 F.R.D. 559, 567 (E.D. Mo. 1990) (“The courts have long recognized that public policy favors settlements as a cost-efficient and convenient means of resolving disputes

⁶ Very preliminary indications are that the settlement is being viewed favorably by Class members. As of this filing, no objections or requests for exclusion have been received by the Claims Administrator. Over 100 Proofs of Claim have been submitted, representing approximately 50% of the shares held by the Class, have been received by the Claims Administrator. Moilanen Aff. at ¶ 3.

and conserving judicial resources.”); *Holden v. Burlington Northern, Inc.*, 665 F. Supp. 1398, 1405 (D. Minn. 1987) (“Federal courts look with favor on the voluntary resolution of litigation through settlement.”).

II. THE REQUESTED FEE AWARD AND EXPENSE REIMBURSEMENT IS REASONABLE AND SHOULD BE APPROVED IF THE COURT GRANTS FINAL APPROVAL TO THE SETTLEMENT.

Courts may award “reasonable attorneys’ fees and non-taxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Parties to the class action may negotiate not only the settlement itself, but also the payment of attorneys’ fees. *Holden v. Burlington Northern Inc.*, 665 F. Supp. 1398 (D. Minn. 1987). An award of attorneys’ fees is committed to the sound discretion of the trial court. *Petrovic v. Amoco Oil Co.*, 700 F.3d 1140 (8th Cir. 1999).

In light of the results achieved and after much discussion by and between the named Plaintiffs and counsel, the following proposal regarding reimbursement of expenses and an award for counsel was reached, subject to the Court’s approval. At the request of the named Plaintiffs and as reflected below, the timing of the attorneys’ fee award is tied to the further receipt of monies by the Class and the overall amount of the award is also tied to the amount of the overall benefit obtained. This proposal was set forth in the Class Notice and, to date, no objection has been received.

A. Reimbursement of Expenses.

As of the filing of this Memorandum, a total of \$215,586 in out-of-pocket expenses have been incurred in connection with this litigation. *See Moilanen Aff.*, Ex. B. Collectively, those expenses can generally be broken down as follows:

\$ 20,768	deposition transcripts
\$ 32,144	photocopies
\$ 15,089	travel and lodging
\$ 2,063	computerized legal research
\$ 6,013	mediation expenses
\$ 92,035	experts
\$ 4,535	messenger costs
\$ 22,946	outside legal counsel
\$ 2,577	third party production of records
\$ 14,000	claims administration (estimated based on budget)
\$ <u>3,416</u>	others (filing fees, postage, service, conference call charges, witness fess, etc.)
TOTAL	\$ 215,586

Id. These expenses were proper and necessary to achieve and effectuate the settlement.⁷

As part of their legal services agreement, the four Class Representatives agreed to pay the above out-of-pocket expenses. In meeting their commitment, they not only individually made contributions to defer costs, but also raised money from thirty other individuals/entities who were members of the putative class. Total contributions from individuals equaled \$88,333, with individual contributions ranging from \$250 to \$10,500. *See Moilanen Aff.*, ¶ 5. At the time Plaintiffs were evaluating the ramifications of settlement and were considering how to allocate settlement proceeds, considerable discussion occurred about how to acknowledge the out-of-pocket contributions made by these putative class members in light of the fact that many other RTI shareholders had been asked to contribute to defer costs, but chose not to do so. It was concluded that Plaintiffs would ask the Court for an additional \$25,000 to be divided proportionally between the 34 individuals who contributed money based on their level of contribution

⁷ These expenses are supported with invoices. The backup is not provided to the Court, but is available upon request. *Moilanen Aff.*, ¶ 4.

and in acknowledgement of the additional risk which they took in helping fund the litigation. Therefore, Plaintiffs seek an Order awarding a reimbursement of expenses in a total amount of \$240,586 (\$215,586 plus \$25,000).⁸

B. Class Representative Incentive Fee Awards.

Courts may make separate or special awards to class representatives in recognition of the risks, time expended and benefits to the class. *See In re Bancorp Litig.*, 29 F.3d 1035 (8th Cir. 2002). The proposed incentive award for the named Plaintiffs is being proposed by Class Counsel.

The four named Plaintiffs were critical to the success of this litigation. Each produced records, answered interrogatories and was deposed. Further, each was the recipient of literally hundreds of emails designed to keep them apprised of the status of the litigation. Additionally, each was an active participant in the settlement negotiations and the development of the Plan of Allocation. *See Moilanen Aff.*, ¶ 6.

Throughout this entire litigation process, none of the Class Representatives ever asked the question, “What is in it for me?” Instead, consistent with their fiduciary duties, Messrs. Tate, Shuster, Ayers and Evanson remained focused on the effort to maximize recovery for all members of the class. The Class Notice informed Class members that

⁸ The law firms have advanced \$127,253 of the expenses (\$215,587 - \$88,333 = \$127,253) and will not share in the \$25,000 which is designed to be split between the individuals who made contributions to the litigation. The Class Notice identified an estimated \$200,000 in expenses as of the time it was approved for mailing. *See Moilanen Aff.*, Ex. A at p. 5. The Class Notice also indicated that a proposed \$25,000 would be set aside for the individuals who contributed in addition to reimbursing them for the money they had contributed. *Id.* To date, no objection has been received regarding this proposal.

Class Counsel was going to seek \$35,000 cumulatively for the Class Representatives and, to date, no objection has been received. *See* Moilanen Aff., Ex. A at p. 5 and ¶ 3. Class Counsel recommends an award in the following amounts:

\$ 7,500 each to Messrs. Shuster, Ayers and Evanson
\$12,500 to Mr. Tate

The difference in the award being proposed by Class Counsel for Mr. Tate recognizes the fact that his tenacious efforts deserve special recognition. Mr. Tate not only worked diligently to secure counsel, but attended numerous depositions other than his own and also attended each of the substantive hearings which took place. Mr. Tate was the main conduit for communications with other Class members. This differentiation does not seek to diminish in any respect the critical role of the other Class Representatives, whose separate efforts and distinct voices benefited the litigation. Rather, it reflects Class Counsel's view that Mr. Tate's extraordinary efforts were particularly critical in obtaining a significant benefit to the Class.

C. The Proposed Class Counsel Fees are Reasonable.

The Court is familiar with counsel and its background and expertise in securities-related class action litigation. That background was provided to the Court in connection with the submission of a motion for class certification and will not be repeated here.

(Dkt. #63)

Counsel has prosecuted this matter on an entirely contingent basis. While the matter presented significant risks to recovery, it was pursued aggressively and, by any

objective standard, exhaustively.⁹ The fee being proposed is the result of discussions with the named Plaintiffs and reflects not merely the time spent to date, but also reflects the expectation that additional work will be required in the monitoring of RTI's sales process and the protection of the integrity of the Notes going forward. The fee being proposed is also within a reasonable range of awards in other cases in which considerable risk is taken and a substantial benefit obtained for the class. *See, e.g., In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 996–97 (D. Minn. 2005) (finding lodestar multiplier of 4.7 reasonable); *In re St. Paul Travelers Sec. Litig.*, CIV. 04-3801 JRTFLN, 2006 WL 1116118, at *1 (D. Minn. Apr. 25, 2006) (approving a multiplier of 3.9); *Yarrington v. Solvay Pharmaceuticals, Inc.*, 697 F. Supp. 2d 1057, 1065–66 (D. Minn. 2010) (finding that 2.26 multiplier is “fair and appropriate”).

1. Hours Spent by the Law Firms.

One method by which to assess the reasonableness of the fee is to look at the hours spent on this matter as multiplied by the reasonable hourly rate and develop a “lodestar.” In this case, the hours spent by each firm are as follows:

⁹ In addition to all of the discovery activities and motion practice, the “RTI” email folder of Mr. Moilanen alone has over 4,600 emails reflecting an average of nearly 15 emails each work day since the inception of the litigation in mid-July 2009 to its settlement in late September 2010. *Moilanen Aff.*, ¶ 2.

ANTHONY OSTLUND BAER
& LOUWAGIE P.A.

LOCKRIDGE GRINDAL
NAUEN P.L.L.P.

Partner Hours	1,784	Partner Hours	417
Associate Hours	1,899	Associate Hours	18
Legal Assistant Hours	286	Legal Assistant Hours	
Case Manager Hours	451	Case Manager Hours	
Summer Associate/Law Clerk	10		

See Moilanen Aff., Exs. B (Affidavit of Gregg Fishbein) and C. Employing the standard hourly rates for each firm, the total lodestar through October 22, 2010 is \$1,412,446. *Id.* In addition, Plaintiffs and Class Counsel will have an ongoing role to monitor the sales process at RTI and to help ensure that the Notes given to the Class will not be impaired. Accordingly, a proposal was developed whereby counsel would be paid a significant portion of any fee award over time, when the ultimate benefit is received by the Class.¹⁰

2. *The Negotiated Proposal*

As reflected in the Class Notice, the award proposal, which is subject to Court approval, is that counsel would received 29% of the total minimum value of the settlement (\$5.5 million), equating to \$1.595 million, as a fee. This is approximately a 1.15 multiplier for the risk taken and the benefit obtained.¹¹ It was also agreed that, subject to Court approval, a portion of counsel's fees as well as expenses will be paid out of the \$2.55 million initial cash allotment, with the remainder of the award coming in connection with the receipt of additional amounts by the Class pursuant to a sale of RTI

¹⁰ If there is no sale, one of the Notes may not be paid out until mid-2014.

¹¹ This modest multiplier is very much in keeping with other awards granted by this Court. *See, e.g., In re Xcel*, 364 F. Supp. 2d at 999 (finding lodestar multiplier of 4.7 reasonable); *In re St. Paul Travelers Sec. Litig.*, Civ. No. 04-3801, 2006 WL 1116118, at *1 (D. Minn. April 25, 2006) (approving multiplier of 3.9).

or payment on the Notes. Moilanen Aff., Ex. A at p. 7. Further, it was agreed that, in the event the Class obtained a benefit greater than the \$5.5 million currently anticipated, Class Counsel would share in that additional benefit. Specifically, if a sale up to \$190 million of RTI occurs and the Class receives monies beyond \$5.5 million, Class Counsel will continue to receive 29% of the additional value obtained by the Class. *Id.* at p. 5. If a sale of RTI occurs between \$190 million and \$200 million, counsel will receive 27% of the additional amount received by the Class resulting from a sale in excess of \$190 million. *Id.* If a sale of RTI occurs for over \$200 million, counsel will receive 23% of all additional amounts received by the Class resulting from a sale in excess of \$200 million. *Id.* Therefore, under various scenarios, the Class Counsel fee would be as follows:

- \$180 million sale of RTI would generate an additional \$700,000 beyond the \$5.5 million for the Class. Counsel would receive 29% of that amount or \$203,000 in addition to the \$1.595 million.
- \$200 million sale of RTI would generate an additional \$2.1 million for the Class beyond the \$5.5 million. Counsel would receive an additional \$406,000 (29% of first \$1.4 million) and \$189,000 (27% of the remaining \$700,000) in addition to the \$1.595 million.
- \$210 million sale of RTI could generate an additional \$2.8 million for the Class beyond the \$5.5 million. Counsel would receive an additional \$406,000 (29% of first \$1,4 million), \$189,000 (27% of \$700,000) and \$161,000 (23% of amounts received by the Class resulting from a sale in excess of \$200 million) beyond the \$1.595 million.¹²

Counsel and the Class Representatives discussed simply paying all of an attorneys' fee award out of the initial \$2.55 million payment. However, the Class

¹² Under this scenario, the Class benefit would be \$8.3 million and the total amount of fees would be \$2,351,000 which is approximately 28% of the overall benefit to the Class or a 1.68 multiplier, still well within the parameters of what other courts in this District have awarded. *See* discussion at p. 14 *supra*.

Representatives wanted counsel to continue to share both the upside and downside risks with the Class. The resulting percentages represent a reasonable compromise and take into account the ongoing activities that will be required by counsel and the further risk being taken by counsel.

CONCLUSION

For all the above reasons, Plaintiffs respectfully request that the proposed relief be granted as set forth above and as will be set forth in a proposed Order to be provided prior to the Final Settlement Hearing.

Dated: November 1, 2010

**ANTHONY OSTLUND BAER
& LOUWAGIE, P.A.**

By: s/ Robert C. Moilanen
Robert C. Moilanen (#74263)
Cory D. Olson (#386941)
Nathan P. Brennan (#0389954)
3600 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: 612-349-6969
Facsimile: 612-349-6996

and

LOCKRIDGE GRINDAL NAUEN P.L.L.P
Richard A. Lockridge (#64117)
Gregg M. Fishbein (#202009)
Suite 2200
100 Washington Avenue South
Minneapolis, MN 55401-2197
Telephone: 612-339-6900
Facsimile: 612-339-0981

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michael Tate, Joseph Shuster, Lyle
Evanson and John Ayers, individually
and on behalf of all other individuals
similarly situated,

Civil File No. 09-cv-02076 (MJD/JJG)

Plaintiffs,

vs.

**LOCAL RULE 7.1(c) WORD
COUNT COMPLIANCE
CERTIFICATE**

Restaurant Technologies, Inc.,
Parthenon Capital LLC, Jeffery R.
Kiesel, John C. Rutherford, Jonathan
O. Grad, Zachary F. Sadek, Philip A.
Clough and Robert E. Weil,

Defendants.

The undersigned certifies that the **Memorandum in Support of Plaintiffs' Motion for Reimbursement of Expenses, Award to Plaintiffs and Award of Attorneys' Fees** complies with Local Rule 7.1(c) and contains 4,617 words. The Microsoft Word 2003 word processing program was used in preparation of this brief and has been applied specifically to include all text, including headings, footnotes, and quotations.

Dated: November 1, 2010

**ANTHONY OSTLUND BAER
& LOUWAGIE, P.A.**

By: s / Robert C. Moilanen

Robert C. Moilanen (#74263)

Cory D. Olson (#386941)

Nathan P. Brennan (#0389954)

3600 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402

Telephone: 612-349-6969

and

LOCKRIDGE GRINDAL NAUEN P.L.L.P

Richard A. Lockridge (#64117)

Gregg M. Fishbein (#202009)

Suite 2200

100 Washington Avenue South

Minneapolis, MN 55401-2197

Telephone: 612-339-6900

Facsimile: 612-339-0981

ATTORNEYS FOR PLAINTIFFS

which took place, the interactions between counsel and the named plaintiffs, the interactions with expert witnesses and the communications with opposing counsel. Since the inception of the litigation, the email folder I have maintained on this matter reflect in excess of 4,600 email exchanges. I believe I am in a position to attest to the expenses which were incurred, the time spent by counsel as well as the role of the class representatives in achieving this settlement.

3. On October 14, 2010, a Notice of Proposed Settlement of Class Action and Hearing regarding the settlement was mailed out by first class mail to RTI shareholders and option holders by Analytics Inc. *See* Exhibit A. The return date for objections, exclusions and Proof of Claim forms is November 12, 2010. As of today's date, I have been advised by personnel of Analytics, Inc. that over 100 Proof of Claim Forms have been returned representing approximately 50% of the total number of shares in the Class. As of this time, I am unaware of any objections or requests for exclusion from the class, although your affiant has fielded a number of telephone calls inquiring about the proposed settlement. It is Plaintiffs' intention to provide a formal report to the Court on November 19, 2010 after the November 12, 2010 return date set forth in the Notice.

4. Attached hereto as Exhibit B is a true and accurate copy of a breakdown of expenses incurred by both law firms in connection with the prosecution of this litigation. Because of their bulk, the invoices backing up these expenses are not being provided, however, each law firm is prepared to do so upon request. Of the expenses identified, the only known material expense not listed is for the Claims Administrator (Analytics, Inc.) who has budgeted approximately \$14,000 for their work. We have not yet received a

formal invoice from Analytics, Inc., but we have no reason to believe that the amount actually incurred will be materially different than that which they proposed. The total amount of expenses incurred in the prosecution of this litigation, including a \$14,000 estimate from Analytics, Inc. was \$215,556.

5. Pursuant to the legal services agreement, the Class Representatives agreed to pay out-of-pocket expenses. During the course of the litigation, Anthony Ostlund Baer & Louwagie P.A. received 44 checks totaling \$88,333 from 34 different people. These checks vary in size from \$250 to \$4,000. The largest overall contribution by one person was \$10,500. All of these payments went to defer the overall costs of \$215,556. The remainder of the expenses incurred have been advanced by the law firms.

6. In consultation with the Lockridge Grindal and Nauen law firm, we are jointly proposing that an incentive award be given to the class representatives in a cumulative amount of \$35,000 and that the amount be divided as follows:

\$ 7,500 each for Mr. Ayers, Schuster and Evanson
\$12,500 for Mr. Tate.

These class representatives not only produced documents, answered interrogatories and participated in their own depositions, each also actively monitored the litigation. They were actively involved in the negotiations resulting in the settlement of this matter and the development of a Plan of Allocation. They were the recipients of literally hundreds of emails during the course of the litigation.

7. Attached hereto as Exhibit C is a true and correct summary of the hours spent by Anthony Ostlund Baer & Louwagie P.A. as well as their standard hourly rate

through October 25, 2010. These summaries are backed up by standard billing invoices itemizing the time spent on a daily basis by each individual. I have reviewed the standard billing invoices and believe the summaries attached hereto as Exhibit C correctly reflect the time spent by each law firm. Attached hereto as Exhibit B is an Affidavit of Gregg Fishbein setting forth the hours spent on this matter by Lockridge Grindal Nauen P.L.L.P. as well as their hourly rates.

FURTHER YOUR AFFIANT SAYETH NOT:

s/ Robert C. Moilanen
Robert C. Moilanen

Subscribed and sworn to before me
this 1st day of November, 2010.

s/ Deanna J. Stower
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michael Tate, Joseph Shuster, Lyle Evanson and John Ayers,
individually and on behalf of all other individuals similarly situated,
Plaintiffs

v.

Restaurant Technologies, Inc., Parthenon Capital LLC, Jeffrey R.
Kiesel, John C. Rutherford, Jonathan O. Grad, Zachary F. Sadek,
Phillip A. Clough and Robert E. Weil,
Defendants

Civil No. 09-cv-02076 MJD/JJG

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

TO: All individuals and entities who held Restaurant Technologies, Inc. ("RTI") common stock or Series A preferred stock as of June 12, 2009 and all individuals or entities holding options to purchase RTI common stock as of May 13, 2009 (the "Class").¹

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. PLEASE NOTE THAT IF YOU ARE A MEMBER OF THE CLASS YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT FUND DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE POSTMARKED OR FAXED ON OR BEFORE NOVEMBER 12, 2010.

IF THERE IS NO PROOF OF CLAIM AND RELEASE FORM INCLUDED WITH THIS NOTICE, YOU ARE MOST LIKELY EXCLUDED FROM THE CLASS. SEE SECTION IV BELOW.

PURPOSE OF THIS NOTICE

The purpose of this Notice is to inform you of the settlement of the class action, *Tate, et al. v. Restaurant Technologies, Inc., et al*, No. 09-cv-02076 MJD/JJG, which is currently pending in United States District Court for the District of Minnesota (the "Litigation"). The matter was filed by Michael Tate, Joseph Shuster, Lyle Evanson and John Ayers (hereinafter collectively referred to as "Plaintiffs") on behalf of themselves and all others similarly situated against Restaurant Technologies, Inc. ("RTI"), Parthenon Capital LLC, Jeffrey R. Kiesel, John C. Rutherford, Jonathan O. Grad, Zachary F. Sadek, Phillip A. Clough and Robert E. Weil (hereinafter collectively referred to as "Defendants"). This Notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the settlement and the Litigation. The settlement creates a minimum fund of \$5.5 million with the potential for additional amounts if RTI is sold prior to June 1, 2013 for an amount in excess of \$170 million. Section VI below sets forth the estimated distribution on a per share basis to Class Members under various scenarios.

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and pursuant to an Order of the Court. The purpose of this Notice is to inform you of your rights with regard to (1) the proposed settlement of the above-captioned lawsuit; and (2) a hearing scheduled to be held on November 29, 2010 at 9:00 a.m. before the Honorable Michael Davis at the United States District Courthouse at 300 South Fourth Street, Minneapolis, Minnesota (the "Final Settlement Hearing"). This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in the Litigation.

¹ By receiving this notice, you are most likely included in the Class, although certain persons and entities who held RTI stock or options are excluded from the Class. See Section IV below. To confirm whether or not you are included in the Class, you may go to the following website: <http://www.qoblaw.com/news/newsline.html>.

The Final Settlement Hearing will determine whether the proposed settlement is fair, reasonable, adequate and in the best interests of the Class; will approve or disapprove of the planned allocation of settlement proceeds among the Class members proposed by Plaintiffs; and will consider the application of Class Counsel for an award of attorneys' fees and costs, and the application for an incentive award for the Plaintiffs as Class Representatives as well as reimbursement to individual members of the Class who made monetary contributions to help fund the litigation. The Court may continue or reschedule the hearing without sending you another notice, so check with the Court before making arrangements to attend the hearing.

DEFINITIONS USED IN THIS NOTICE

1. "Claims Administrator" means Analytics, Incorporated an independent claims administrator selected by Class Counsel and appointed by the Court.
2. "Class" means all individuals and entities who held RTI common stock or Series A preferred stock as of June 12, 2009 and all individuals or entities holding options to purchase RTI common stock as of May 13, 2009. Excluded from the Class are all Defendants and their affiliates, the present officers and directors of RTI and their immediate families, RTI's legal representatives and financial representatives, and ABS Capital Partners and its affiliates. Also excluded from the Class, with respect to their ownership of options canceled in the 2009 reorganization, are individual employees of RTI who subsequently received options pursuant to a plan adopted on September 3, 2009. Also excluded from the Class are those persons who request exclusion from the Class in such form and manner, and within such time, as the Court shall prescribe.
3. "Class Member" or "Member of the Class" means a person who falls within the definition of the Class, and "Class Members" means all such persons.
4. "Class Counsel" means Anthony, Ostlund, Baer & Louwagie P.A. and Lockridge Grindal Nauen P.L.L.P.
5. "Defendants" means RTI, Parthenon Capital LLC and the Individual Defendants.
6. "Final Settlement Approval" means an order and judgment by the United States District Court for the District of Minnesota finally approving the terms of this Stipulation pursuant to Fed. R. Civ. P. 23(e).
7. "Individual Defendants" means Jeffrey R. Kiesel, John C. Rutherford, Jonathon O. Grad, Phillip A. Clough, Zachary F. Sadek and Robert E. Weil.
8. "Litigation" means the Class Action and the Appraisal Action.
9. "Net Settlement Fund" means the Settlement Fund less the amount allocated to Counsel for attorneys' fees and expenses pursuant to any Fee and Expense Application approved by the Court.
10. "Parties" means, collectively, each of the Defendants and the Plaintiffs (on behalf of themselves and the Class Members).
11. "Plaintiffs" means Michael Tate, Joseph Shuster, Jack Ayers and Lyle Evanson.
12. "Plan of Allocation" means a plan or formula of allocation of the Settlement Fund whereby the Net Settlement Fund shall be allocated to Class Members.
13. "Released Claims" means any and all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever (including, but not limited to, all claims for damages, interest, attorneys' fees and expert consulting fees and all other costs, expenses and liabilities whatsoever), whether based at law or in equity, on federal, state, local, foreign, statutory or common law or on any other law, rule, or regulation (including, but not limited to, all claims arising out of or relating to any acts, omissions, disclosures, financial statements, audit opinions, or statements by the Defendants, including without limitation, claims for negligence, constructive or actual fraud, negligent misrepresentation, conspiracy, or breach of fiduciary duty), whether known or unknown, accrued or not accrued, foreseen or unforeseen, matured or not matured, that were asserted or that could have been asserted directly, indirectly, representatively or in any other capacity, at any time, in any forum by Plaintiffs against the Released Persons arising out of, based upon, or related in any way to: (a) the purchase, holding or acquisition of any securities of RTI by any Class Member, the allegations that were made or could have been made in the Litigation and any of the facts, transactions, events, occurrences, disclosures, statements, acts, omissions or failures to act which were or that could have been asserted by Plaintiffs in the Litigation, and any and all other claims that Plaintiffs did or could have raised against Defendants in their capacity as equityholders in RTI; or (b) the settlement or resolution of the Litigation. This term is broadly defined to include unknown claims under certain circumstances and is set forth in more detail in the Stipulation of Settlement which is available for review at: <http://www.aoblaw.com/news/newsline.html>.

14. "Released Persons" means the Defendants, their past or present directors, managers, officers, partners, members, employees, controlling shareholders, present and former attorneys, consultants, accountants or auditors, banks or investment banks, advisors, agents, personal or legal representatives, lenders, insurers, reinsurers, predecessors, successors, parents, subsidiaries, divisions, assigns, spouses, heirs, devisees, executors, trustees, administrators, or related or affiliated entities, any partnership in which a Defendant is a general or limited partner, any entity in which a Defendant has a controlling interest, any entity in which a Defendant is a managing member, any member of an Individual Defendant's immediate family, or any trust or foundation of which any Defendant is the settlor or which is for the benefit of any Individual Defendant and/or member(s) of his or her family. Insurers providing director and officer insurance coverage to present and former directors and officers of RTI are included in the definition of Released Persons.
15. "RTI" means Restaurant Technologies, Inc., together with any and all predecessors, successors, subsidiaries, and affiliates.



A. Plaintiffs' Assertions and Defendants' Denials

RTI provides bulk cooking oil management to restaurants through a unique distribution device which permits RTI to supply cooking oil efficiently to high volume users of cooking oil, and to also pick up used oil ("yellow grease") and recycle it. RTI enjoys contracts with McDonald's, Burger King, Jack in the Box, McCormick & Schmick's, Chili's and numerous other high volume users of cooking oils.

Plaintiffs allege that Defendant Parthenon Capital LLC took control of RTI sometime before 2004 and utilized that control to the detriment of other RTI shareholders by, among other things, diverting RTI's equity to itself. Plaintiffs assert this occurred through a number of preferred stock offerings and culminated in a 2009 recapitalization which froze out RTI common shareholders and underpaid Series A preferred shareholders. Plaintiffs also allege that Defendants acted in concert and elevated their own interests above those of other RTI shareholders to whom they owed fiduciary duties. Plaintiffs have also asserted that the Proxy Materials used in connection with the 2009 recapitalization contained false and misleading statements, omitted to state material facts necessary to make the statements made not misleading and failed to properly advise RTI shareholders of their ability to pursue certain appraisal rights.

Defendants deny all alleged wrongdoing and contend that their conduct was at all times legal and was in the best interest of RTI. Defendants also contend that without the financial support of Defendant Parthenon Capital LLC and other private equity firms, RTI may not have survived. Defendants also contend that, even if a jury was to determine that some act or failure to act took place in connection with the 2009 recapitalization, that Plaintiffs suffered no damage given the financial condition of RTI at that time. The Court has not ruled on the merits of any of the claims or defenses. This Notice is not an expression of any opinion by the Court about the merits of any of the claims or defenses asserted by any party in the Litigation.

**SOME RELEVANT PUBLICLY-FILED PLEADINGS RELATED TO
THIS MATTER ARE AVAILABLE FOR YOUR REVIEW AT:
[HTTP://WWW.AOBLAW.COM/NEWS/NEWSLINE.HTML](http://www.aoblaw.com/news/newsline.html)**

**IF YOU DESIRE MORE DETAILED INFORMATION AS TO THIS MATTER,
YOU ARE ENCOURAGED TO EXAMINE THE POSTED MATERIAL.**

B. Settlement Through a Mediation Process

In June 2010 the parties commenced a mediation process employing a former district court judge as a mediator. The mediation process occurred over a series of weeks with the parties eventually reaching an agreement on a settlement framework that was proposed by the mediator. At the time the parties reached agreement on the proposed settlement, pre-trial discovery was nearing completion. Counsel for both parties exchanged and reviewed hundreds of thousands of pages of documents produced by the parties and by third parties, consulted with experts, and participated in over 30 depositions. As a result of this investigation and discovery, all parties had obtained significant knowledge regarding the strengths and weaknesses of the claims and defenses in this case. The parties incorporated this knowledge into settlement negotiations and are now recommending approval of the settlement.

Class Counsel believes that the recovery obtained is in the best interests of the Class (as defined herein). Because of the risks associated with continuing the Litigation and proceeding to trial, there was a danger that Plaintiffs would not have prevailed

on any of their claims, in which case the Class would have received nothing. Indeed, Defendants assert that they did not breach any fiduciary duties, never made any false or misleading statements or omissions at any time, and did not engage in any other wrongdoing. If the Litigation were tried, Defendants intended to assert that the 2009 recapitalization was fair and that given the valuation for RTI at the time, the Class was not entitled to any damages. Defendants also would have asserted that many of Plaintiffs' claims were derivative and should be dismissed under applicable law.

IV. CLASS MEMBERSHIP

On March 31, 2010, Plaintiffs filed a motion seeking Court approval of the people who would be considered members of the Class (a motion to certify the Class). The Class proposed by Plaintiffs included holders of RTI common stock, RTI preferred stock and holders of unexercised options to purchase RTI common stock. The proposed Class excluded Defendants, current officers and directors of RTI, members of their immediate family and their legal representatives, financial representatives, heirs, successors and assigns, Parthenon Capital LLC and ABS Capital LLC and their affiliates as well as holders of Series B-1 and B-2 preferred stock issued by RTI. As of the time of the settlement, the Court had not formally "certified," or ruled upon, class membership.

The Court has now preliminarily approved for purposes of settlement, a settlement class, has appointed Class Counsel and has approved the Plaintiffs as Class Representatives.² The Class definition for purposes of the settlement is slightly different than that which was proposed earlier and is as follows:

All individuals and entities who held RTI common stock or Series A preferred stock as of June 12, 2009 and all individuals or entities holding options to purchase RTI common stock as of May 13, 2009 (the "Class"). Excluded from the Class are the individual Defendants and members of their immediate family; Defendant RTI and its current officers and directors, legal representatives and financial representatives; Defendant Parthenon Capital LLC, ABS Capital Partners and their affiliates, subsidiaries and individuals affiliated with those entities. Also excluded from the Class, with respect to their ownership of options canceled in the 2009 recapitalization, are individual employees of RTI who subsequently received options pursuant to a Plan adopted on September 3, 2009.

Plaintiffs assert that determinations as to who should be included as members of the settlement class were made based upon (1) ownership of RTI shares or options and (2) considerations of fairness and equity.

V. THE PROPOSED SETTLEMENT

A brief summary of the terms of the Settlement Agreement (a copy of which is available at the website referenced above and is also on file with the Court) is as follows:

1. Defendants will pay the Class \$2.55 million cash; \$1.275 million of this amount will be put into trust upon preliminary approval of the Settlement and \$1.275 million will be paid into trust upon final approval of the Settlement;
2. Defendants have represented to Plaintiffs that RTI has retained an investment banking firm to assist in its efforts to sell the company and it intends to pursue that effort in good faith. There is no guarantee a sale will be consummated nor is there a guaranteed timetable for such a sale. Nonetheless, based in part upon the representation of a possible sale:
 - a. RTI will issue a \$1.55 million note payable to the Class by June 1, 2013 or upon the sale of RTI, whichever is earlier, which note is to be subordinated to certain pre-existing RTI debts and will bear a 3% interest rate;
 - b. RTI will also issue a \$1.40 million note payable to the Class (also subordinated to certain pre-existing debt and paying 3% interest rate), which note will be payable the earlier of the closing of an RTI sale or June 1, 2014. This note will be deemed fully satisfied in the event of a sale closing before June 1, 2013 for a gross sales price in excess of \$150 million, in which case the Class (as designated) will be paid 7% of all amounts over \$150 million in connection with a sale in full satisfaction of such note. However, in no event will the Class receive less than the \$1.40 million amount reflected by the note and may receive additional sums if the sale of RTI occurs before June 1, 2013 and the gross sales price for RTI exceeds \$170 million.

As summarized above, the minimum payment by the Defendants will be \$5.5 million (dependent upon RTI's credit for \$2.95 million of that amount payable over time pursuant to the notes). Because Plaintiffs may receive a percentage of the proceeds from any sale of RTI, in lieu of the second note identified in paragraph 2b above, the settlement amount may ultimately

² To review the Court's Order Preliminarily Approving the Settlement and Approval of the Form and Manner of Notice, visit <http://www.qoblaw.com/news/newsline.html>.

be an amount in excess of \$5.5 million. Again, there is no guarantee a sale will be consummated nor is there a guaranteed timetable for such a sale.

Because of the nature and timing of payments, the Settlement Agreement requires ongoing jurisdiction of the Court and provides for monitoring of the financial position of RTI and the sales process by the Plaintiffs or their representatives. Under the terms of the Settlement Agreement, the parties will ask the Court to retain jurisdiction over this matter until all the terms of the Settlement Agreement have been fully satisfied.

THE PROPOSED SETTLEMENT IS A COMPROMISE OF DISPUTED LEGAL CLAIMS. IT IS NOT AN ADMISSION OF LIABILITY BY ANYONE AND DOES NOT MEAN THAT THE COURT HAS FOUND LIABILITY FOR ANY OF THE CLAIMS BY PLAINTIFFS.

VI. PLAN OF ALLOCATION AND PLAN OF DISTRIBUTION

The Class consists of certain holders of RTI common stock, RTI preferred stock and option holders. The four named Plaintiffs collectively have interests in each of these groups. The Class excludes Defendants, certain RTI officers and Board members, investment banking firms, and financial institutions³ For a list of who is in the Class and who is excluded from the Class go to: <http://www.aoblaw.com/news/newsline.html>.

If the proposed settlement is approved by the Court and becomes final, the money generated by the settlement will be distributed pursuant to a Plan of Allocation and Plan of Distribution approved by the Court. The Plan of Allocation being proposed by Plaintiffs is set forth below:

- a. **Costs.** All out-of-pocket costs will be paid out of the initial \$2.55 million cash payment. Total out-of-pocket costs in this matter are expected to be in the range of \$200,000 by the time of the Final Settlement Hearing. These costs will be itemized and filed with the Court in connection with a Fee Petition and an Incentive Award Petition to be filed approximately two weeks after your receipt of this Notice and prior to the Final Settlement Hearing.
 A portion of the out-of-pocket costs were paid by approximately 40 individual members of the class who made contributions to help pay these costs as the litigation progressed. In addition to being reimbursed for helping fund the litigation, Plaintiffs are recommending that a pool of \$25,000 be set aside and divided among these individuals on a basis proportional to their monetary contribution in acknowledgement of the risk taken by these individuals in assisting with the funding of the litigation.
- b. **Class Representative Incentive Fee.** The four named Plaintiffs each participated in the litigation through monitoring and consultation, communications with Class members, attending depositions, answering interrogatories, producing documents, attending hearings and raising funds to support the litigation. A cumulative amount of \$35,000 is being proposed by Class Counsel in acknowledgment of the efforts undertaken by the four named Plaintiffs with respect to the litigation. The request for this award will be filed with the Court in connection with a Fee Petition to be filed approximately two weeks after the mailing of this Notice and prior to the Final Settlement Hearing
- c. **Attorneys' Fees.** Class Counsel will be seeking an attorneys' fee award in an amount not to exceed 29% of the total recovery to the Class. If a sale of RTI occurs for more than \$190 million, Class Counsel intends to seek a reduced sum of 27% of amounts received by the Class resulting from a sale over \$190 million and intends to recommend a further reduction to 23% of any amounts received by the Class from a sale over \$200 million. This request for an attorneys' fee award will be set forth in a Fee Petition to be filed with the Court approximately two weeks after the mailing of this Notice and prior to the Final Settlement Hearing.
- d. **Division of Net Proceeds.**
 - i. **Option Holders.** The option holders who are members of the Class hold approximately 275,000 options with exercise prices ranging from \$5 per share to \$27 per share. These options were extinguished at the time of the 2009 recapitalization. Under the minimum \$5.5 million settlement, the amounts per share being returned to the common and preferred shareholders are considerably less than the lowest exercise price (\$5) of the RTI options. See discussion in Section VI.d.ii below. Under these circumstances, the Plaintiffs/Class representatives (two of whom hold options) do not feel that an allocation of proceeds to option holders is appropriate. In the event there is a sale of RTI in excess of certain levels, the Plaintiffs have determined that a pool of money should be made available to the option holders. Specifically, Plaintiffs are recommending as part of the Plan of Allocation that

³ The Class is made up of approximately 260 individuals/entities holding 329,455 shares of Class A preferred stock, 1,251,015 shares of RTI common stock and 275,000 options.

if a sale of RTI takes place above \$200 million, a portion of the proceeds to go to the Class as a whole should be set aside for option holders in an amount of \$10,000 for every \$1 million in excess of the \$200 million floor. For example, a sale of RTI for \$215 million would make \$150,000 available for distribution to option holders. Conversely, a sale of less than \$200 million, or no sale at all, would generate no return for option holders. There can be no assurance that a sale of RTI will occur, when a sale may occur or what value a sale may generate.

Further, Plaintiffs believe that if a pool becomes available for the option holders in the future, the pool should be divided as follows:

34% to those holding options exercisable at \$5 and \$10.

33% to those holding options exercisable at \$15 and \$19.

33% to those holding options exercisable at \$23 or \$27.

Any amounts would be divided on a per option held basis.

- ii. *RTI Preferred and Common Stockholders.* Plaintiffs' proposed allocation of the Net Settlement Fund for the RTI preferred and common shareholders is based on an analysis which considered investment amounts, Plaintiffs' argument that the 2009 recapitalization was not a liquidation event and gave no preference rights to RTI preferred shareholders, the amounts actually received by RTI preferred shareholders in the 2009 recapitalization, the types of equitable relief that a court could administer and the respective strengths and weaknesses of the legal position of the RTI preferred shareholders and the RTI common shareholders. Plaintiffs are proposing the following:

(1) Minimum \$5.5 Million Settlement

In the event that no sale of RTI occurs or a sale occurs for less than \$170 million, the gross value of the settlement is \$5.5 million. After a deduction for fees and costs as proposed above, the following approximate amounts would be distributed to RTI preferred and common shareholders:

\$2.92 per preferred share

\$2.14 per common share

These amounts may vary depending on the accrual of interest on the notes, the number of people who opt out of the Class, the number of people who return their claim forms, the actual (instead of estimated) out-of-pocket costs incurred, interest on the money held in trust for the Class, whether the Court awards the fees described above, and other factors. However, the above represents Plaintiffs' best estimate of the amount to be paid to RTI preferred and common shareholders comprising the Class assuming the minimum \$5.5 million settlement.

(2) Other Potential Recoveries

If a sale of RTI takes place before June 2013 and if the sale is in excess of \$170 million, then Class members could receive a return greater than that set forth above. Below are calculations assuming a sale of RTI at different amounts.

If RTI sells for \$190 million, the Class may expect to receive monies in the following range:

\$3.73 per preferred share

\$2.72 per common share

If RTI sells for \$200 million, the Class may expect to receive monies in the following range:

\$4.17 per preferred share

\$3.01 per common share

Plaintiffs cannot project exact recoveries under the settlement and can only provide estimates/ranges of potential outcomes because it is uncertain whether a sale will occur and, if so, what the sale price of RTI will be. Presumably, the higher the price obtained by RTI in a sale, the greater the potential recovery. However, these are best estimates which could vary based on a number of other factors including the accrual of interest on the notes, the number of persons who opt out of the Class, the number of people who return Claim Forms, the actual out-of-pocket expenses incurred and the amount of any fees which the Court may award.

If this matter is approved at the Final Settlement Hearing, as part of its Plan of Distribution Plaintiffs are proposing to pay out-of-pocket costs and a portion of attorneys' fees out of the initial \$2.55 million cash proceeds while holding the remaining amount in trust for distribution to the Class. If the sale of RTI appears likely to occur on or before June 30, 2011, it is Plaintiffs' current intention to not do a partial distribution, but to wait until all proceeds are received pursuant to the settlement. If, however, it appears that a sale is unlikely to occur before that date, then the Plaintiffs may elect to do a partial, preliminary distribution to the Class. This could be subject to change depending on the circumstances surrounding the potential sale of RTI and Class Members would be prudent to not have an expectancy of the receipt of their portion of this recovery at a specific time.

VII. PARTICIPATION IN THE CLASS

If you do not request to be excluded from the Class in the manner specified in Section VIII below, you are a Class Member and will be bound by any judgment entered with respect to the settlement in the Litigation whether or not you submit a Proof of Claim and Release form. **If you are a Class Member, you need do nothing other than timely file a properly completed Proof of Claim and Release form if you wish to participate in the distribution of the Net Settlement Fund. Attached to this Notice is a Proof of Claim and Release Form with mailing instructions. You must return this Proof of Claim and Release Form by November 12, 2010 to participate in the recovery.**

If you choose, you may enter an appearance individually or through your own counsel at your own expense by filing such appearance with the Clerk of the Court, United States District Court for the District of Minnesota, 300 South Fourth Street, Minneapolis, Minnesota 55415; provided, however, in order to pose an objection to the settlement at the Final Settlement Hearing, you and your counsel must provide a written statement explaining your objection and identify any exhibits which you may utilize and witnesses you may call. A copy of your written objection should be sent to the Court with copies to Counsel identified in Section VIII below no later than November 12, 2010. Class Members may both pose an objection to the settlement and also submit a Proof of Claim and Release Form to allow them to participate in the distribution of the Net Settlement Fund, if the settlement is ultimately approved by the Court.

**TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST
TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM
THAT ACCOMPANIES THIS NOTICE.**

The Proof of Claim and Release Form must be hand delivered, postmarked or faxed on or before November 12, 2010, to the Claims Administrator at the address or facsimile number shown on the Proof of Claim and Release Form. If you submit the Proof of Claim and Release Form by facsimile, you must retain the facsimile confirmation page. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim and Release Form, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the Judgment. All Class Members whose claims are not approved shall be barred from participating in distributions from the Net Settlement Fund, but will in all other respects be subject to and bound by the Judgment.

VIII. EXCLUSION FROM THE CLASS

You may request to be excluded from the Class. To do so, you must send a written request stating that you wish to be excluded from the Class to:

Robert C. Moilanen, Esq.
Anthony Ostlund Baer & Louwagie P.A.
3600 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Facsimile: (612) 349-6996
Counsel for Plaintiffs

James K. Langdon, Esq.
Dorsey & Whitney LLP
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402
Facsimile: (612) 340-2868
Counsel for Defendants

Your exclusion request must be hand delivered, postmarked or faxed on or before November 12, 2010, and, in order to be valid, must clearly identify the holder of the RTI securities, the address of the holder of the RTI securities and the type of RTI securities which were held prior to June 12, 2009. If you submit a valid, timely and complete request for exclusion, you shall have no rights under the settlement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the final judgment. However, if your exclusion request fails to contain all of the foregoing information, it will be invalid and you will be bound by the terms and conditions of the judgment.

IX. DISMISSAL AND RELEASES

If the settlement is approved, the Court will enter a Judgment in this Litigation. The Judgment will dismiss the Released Claims with prejudice as to all Defendants. The Judgment will also provide that Plaintiffs and each of the Class Members, on behalf of themselves, their affiliates, predecessors, successors, assigns, agents, employees, heirs, executors, administrators and all other persons or entities controlled by, or under common control with, who have not validly and timely requested to be excluded from the Class shall be deemed to have (i) fully, finally and forever released, relinquished and discharged all Released Claims (including certain unknown claims pertaining to the subject matter of this litigation) against all the Released Persons, whether or not such Class Member executes and delivers the Proof of Claim and Release; (ii) covenanted not to sue any of the Released Persons or otherwise to assert, directly or indirectly, any of the Released Claims against any of the Released Persons including any claims seeking approval; and (iii) agreed to be forever barred and enjoined from doing so, in any court of law or equity, or in any other forum.

X. MORE INFORMATION/FREQUENTLY ASKED QUESTIONS

All Court records may be examined in person and copied at the office of the Clerk of Court, United States District Court, District of Minnesota, United States Courthouse, 300 South Fourth Street, Minneapolis, MN during normal business. Further, certain information about the case and the settlement is available at <http://www.aoblaw.com/news/newsline.html>. The website also addresses answers to frequently asked questions like: (1) When may I expect to see my payment from the settlement? (2) What claims am I settling? (3) Why did Plaintiffs propose the allocation to the proceeds in the manner they did? (4) What happens if I do not submit a Proof of Claim and Release Form?; and (5) What happens if I opt out of the Class? Members of the Class are encouraged to visit the website.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK OF THE COURT OR RESTAURANT TECHNOLOGIES, INC. REGARDING THIS NOTICE.

Date: October 8, 2010

BY ORDER OF THE COURT
The Honorable Michael Davis
United States District Court, District of Minnesota

**ANTHONY OSTLUND
BAER & LOUWAGIE P.A.**

BUSINESS LITIGATORS

90 South Seventh Street, Suite 3600
Minneapolis, MN 55402
Phone: 612-349-6969; Fax: 612-349-6996
Tax ID # 41-1534815

Invoice 42961 - 46902
October 26, 2010

ID: 3349-002 - RCM

Re: CONTINGENT: RTI Litigation

Disbursements

Date	Description	Amount
	Computerized Legal Research (Lexis/Westlaw/Pacer/Accurant)	1,905.40
	Photocopies	31,118.80
	Filing Fees	320.00
	Postage	297.12
	Color Copies	167.50
	Messenger Costs	4,535.70
	Express Mail/Overnight Delivery	935.42
	Witness Fees	1,125.60
	Records & Documents	2,577.74
	Legal Fees-Outside Counsel	22,946.75
	Travel/Mileage/Air fare/Hotel	10,335.89
	Court Reporters	20,768.86
	Process Service	279.82
	Expert/Consultant Fees; Consulting services.	5,000.00
	Expert Witness	87,035.11
	Conference Call	314.04
	Arbitrator/Mediator Fees	6,013.00
Total Disbursements		195,676.75

EXHIBIT B

3. The summaries attached hereto accurately reflect the time spent as well as the expenses incurred by Lockridge Grindal Nauen P.L.L.P. in the above-entitled matter.

FURTHER YOUR AFFIANT SAYETH NOT:



Gregg M. Fishbein

Subscribed and sworn to before me
this 29th day of October, 2010.



Notary Public



RESTAURANT TECHNOLOGIES, INC. FEE REPORT			
FIRM NAME: Lockridge Grindal Nauen P.L.L.P.			
REPORTING PERIOD: Inception - September 30,2010			
Timekeeper	Hours	Rate	Lodestar
Richard A. Lockridge	52.25	\$ 625.00	\$ 32,656.25
Charles N. Nauen	0.75	\$ 600.00	\$ 450.00
Harry E. Gallaher	8.50	\$ 500.00	\$ 4,250.00
Gregg M. Fishbein	359.00	\$ 500.00	\$ 179,500.00
Kate Baxter-Kauf	7.75	\$ 160.00	\$ 1,240.00
Carey R. Baehman	10.00	\$ 165.00	\$ 1,650.00
Total	438.25		\$ 219,746.25

RESTAURANT TECHNOLOGIES, INC. EXPENSE REPORT	
FIRM NAME: Lockridge Grindal Nauen P.L.L.P.	
REPORTING PERIOD: Inception - September 30, 2010	
Description	Amount
Travel	\$ 4,740.91
Postage/Express Delivery	\$ 144.52
Internal Copies	\$ 858.30
Computer Research	\$ 158.31
Miscellaneous (Describe)	
Food & Beverage	\$ 13.06
Total	\$ 5,915.10

**RTI FEE PETITION TIME AND RATE SUMMARY
FOR ANTHONY OSTLUND BAER & LOUWAGIE P.A.**

Timekeeper	Hours	Rate	Total
Joseph W. Anthony	1.50	\$ 495.00	\$ 742.50
Norman J. Baer	5.10	\$ 480.00	\$ 2,448.00
Robert C. Moilanen	506.80	\$ 395.00	\$ 200,186.00
Robert C. Moilanen	1,271.30	\$ 425.00	\$ 540,302.50
Shannon M. Awsumb	27.30	\$ 250.00	\$ 6,825.00
Cory D. Olson	105.30	\$ 175.00	\$ 18,427.50
Cory D. Olson	153.40	\$ 200.00	\$ 30,680.00
Larina A. Alton	275.10	\$ 175.00	\$ 48,142.50
Larina A. Alton	397.40	\$ 200.00	\$ 79,480.00
Nathan P. Brennan	192.40	\$ 175.00	\$ 33,670.00
Nathan P. Brennan	743.20	\$ 200.00	\$ 148,640.00
Steven C. Kerbaugh	5.30	\$ 175.00	\$ 927.50
Lisa M. O'Donnell	286.70	\$ 185.00	\$ 53,039.50
Sam A. Brown	451.95	\$ 65.00	\$ 29,376.75
Brianna J. Blazek	10.50	\$ 125.00	\$ 1,312.50
Total:	4,433.25		\$ 1,194,200.00