

# EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JULI WINTJEN, on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

DENNY'S INC., *et al.*,

Defendants.

Civil Action No.: 2:19-cv-00069-CCW

**AMENDMENT TO COLLECTIVE AND CLASS ACTION PARTIAL SETTLEMENT  
AND RELEASE AGREEMENT**

Pursuant to Section 9.14 of the *Settlement Agreement*,<sup>1</sup> *Plaintiffs*, individually and on behalf of the *ETCN Rule 23 Subclass* and the *FLSA Collective*, and *Defendant* hereby submit the following amendment to the previously submitted *Settlement Agreement*. Specifically, the *Parties* seek to remove Section 5.8 (A) and (B) entirely and replace them with Section 5.8 (A) and (B) set forth below. In addition, the *Parties* also seek to replace the *Class Notice* (Exhibit A) entirely with the revised class notice attached hereto as Exhibit A.

**5.8 Calculation of Settlement Payments for Plaintiff Gower and Partial Settlement Class Members.**

(A) ***Estimated Settlement Payment.*** The *Notice Packet* will contain an “*Estimated Payment*” for the individual *Partial Settlement Class Member* to whom it was mailed. The *Claims Administrator* will calculate this estimated payment as follows:

(1) The *Claims Administrator* will apply the *Residual FLSA Amount* as a credit towards *Defendant's* payment of the *Settlement Amount*. The *Claims Administrator* will then deduct from the *Settlement Amount* (i) the maximum *Service Payment* sought for *Plaintiff Gower*, (ii) the estimated fees and expenses of the *Claims Administrator*, and (iii) the “*FLSA Summary Judgment Back Pay*” (defined below). The resulting number will be referred to as the “*Estimated Net Settlement Amount*.”

(2) For each putative *Partial Settlement Class Member*, the *Claims*

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<sup>1</sup> All italicized words used herein shall have the meanings ascribed to them in the *Settlement Agreement* (“SA”) previously submitted to the *Court*.

*Administrator* will total the amount of tip credit taken by *Defendant* for all hours worked under the “05-Server” job code during the *Class Period* or *FLSA Collective Period*, whichever (a) applies and (b) if both apply, whichever is longer. The *Claims Administrator* will then perform the following calculations:

(a) add together the total back pay claimed by all individuals in the *FLSA Collective* during the most recent 3 years and 1 week of the *FLSA Collective Period*. This amount will be referred to as the “*FLSA Summary Judgment Back Pay*.” A *Partial Settlement Class Member* who is a member of the *FLSA Collective* and has a back pay figure above zero that is part of the *FLSA Summary Judgment Back Pay* shall recover this Back Pay on a dollar-for-dollar basis (their (“*Individual FLSA Summary Judgment Back Pay Amount*”));

(b) The *Claims Administrator* will then total back pay claimed for the remainder of the *FLSA Collective Period* (e.g., back pay claimed from the time period 3 years and 8 days through 4 years and 1 week) and total the Back Pay claimed by individuals who are members of the *ETCN Rule 23 Subclass*. That total will then be compared to the *Estimated Net Settlement Amount* to determine the “*Estimated Fractional Recovery Amount*.” To expedite these calculations, the *Claims Administrator* can use its prior calculations performed during this course of litigating this *Action*. An example of this calculation is as follows:

- (i) if an individual who was only a member of the *FLSA Collective* and all hours worked were within the 3 years and 1 week timeframe, and was paid \$2.83 per hour, resulting in *Defendant* taking a tip credit of \$4.42 per hour, and that employee worked 100 hours during the *Class Period* under the “05-Server” job code, that individual would be owed \$442.00. Their back pay would only be included in the *FLSA Summary Judgment Back Pay Amount*;
- (ii) if an individual who was a member of the *FLSA Collective* and worked the same 100 hours during the same time period in the above example and worked an additional 100 hours between 3 years and 8 days and 4 years and 1 week, and was paid \$2.83 per hour, resulting in *Defendant* taking a tip credit of \$4.42 per hour, that individual would be owed (a) \$442.00 for the first block of time and (b) \$442.00 multiplied by the *Estimated Fractional Recovery Amount* for the second block of time. When the sums of (a) and (b) in this subparagraph are added together, that amount equals that individual’s *Estimated Individual Recovery Amount*;

- (iii) if an individual who was a member of only the *ETCN Rule 23 Subclass* and worked 100 hours during the *Class Period*, and was paid \$2.83 per hour, resulting in *Defendant* taking a tip credit of \$4.42 per hour, that individual would be owed \$442.00 multiplied by the *Estimated Fractional Recovery Amount* to determine their "*Estimated Individual Recovery Amount*."
  - (3) For purposes of performing the calculations set forth in the Section 5.8(A)(2), if an individual is a member of both the *FLSA Collective* and the *ETCN Rule 23 Subclass*, their calculations shall be performed as though they were a member of the *ETCN Rule 23 Subclass* only.
  - (4) The *Estimated Individual Recovery Amount* for all putative *Partial Settlement Class Members* will then be added together by the *Claims Administrator* to determine the "*Estimated Total Recovery Amount*."
  - (5) The *Claims Administrator* will then add each putative *Partial Settlement Class Member's Estimated Individual Recovery Amount* to their individual portion, if any, of the *Individual FLSA Summary Judgment Back Pay Amount* determine that individual's *Partial Settlement Class Member "Estimated Settlement Payment"*.
  - (6) Upon receipt of the *Notice Packet*, any *Partial Settlement Class Member* who wishes to challenge either (i) the calculation of his or her *Estimated Settlement Payment* or (ii) the required deductions set forth within *Defendant's* payroll records (e.g., garnishments, tax liens, child support) must submit a written, signed declaration to the *Claims Administrator* for receipt by the *Claims Administrator* on or before the *Bar Date*. The *Claims Administrator* will resolve the challenge and make a final and binding determination without hearing or right of appeal.
- (B) ***Settlement Payment.*** All *Partial Settlement Class Members* will receive money in connection with this *Settlement*. Once the *Settlement* becomes *Final*, the *Claims Administrator* will calculate the *Settlement Payments* as follows:
- (1) The *Claims Administrator* will apply the *Residual FLSA Amount* as a credit towards *Defendant's* payment of the *Settlement Amount*. The *Claims Administrator* will then deduct from the *Settlement Amount* the following amounts as awarded or permitted by the *Court*: (i) the *Service Payment*, if any, to *Plaintiff*, (ii) the fees and expenses of the *Claims Administrator*, and (iii) the "*FLSA Summary Judgment Back Pay*" (defined below). The resulting number will be referred to as the "*Net Settlement Amount*."
  - (2) For each *Partial Settlement Class Member*, the *Claims Administrator* will

total the amount of tip credit taken by *Defendant* for all hours worked under the “05-Server” job code during the *Class Period* or *FLSA Collective Period*, whichever (a) applies and (b) if both apply, whichever is longer. The *Claims Administrator* will then perform the following calculations:

- (a) add together the total back pay claimed by all individuals in the *FLSA Collective* during the most recent 3 years and 1 week of the *FLSA Collective Period*. This amount will be referred to as the “*FLSA Summary Judgment Back Pay*.” A *Partial Settlement Class Member* who is a member of the *FLSA Collective* and has a back pay figure above zero that is part of the *FLSA Summary Judgment Back Pay* shall recover these back pay amounts on a dollar-for-dollar basis (their “*Individual FLSA Summary Judgment Back Pay Amount*”);
- (b) The *Claims Administrator* will then total back pay for the remainder of the *FLSA Collective Period* (e.g., back pay claimed from the time period 3 years and 8 days through 4 years and 1 week) and total the back pay claimed by individuals who are members of the *ETCN Rule 23 Subclass*. That total will then be compared to the *Net Settlement Amount* to determine the “*Fractional Recovery Amount*.” To expedite these calculations, the *Claims Administrator* can use its prior calculations performed during this course of litigating this *Action*. An example of this calculation is as follows:
  - (i) if an individual who was only a member of the *FLSA Collective* and all hours worked were within the 3 years and 1 week timeframe, and was paid \$2.83 per hour, resulting in *Defendant* taking a tip credit of \$4.42 per hour, and that employee worked 100 hours during the *Class Period* under the “05-Server” job code, that individual would be owed \$442.00. Their back pay claim would only be included in the *FLSA Summary Judgment Back Pay Amount*;
  - (ii) if an individual who was a member of the *FLSA Collective* and worked the same 100 hours during the same time period in the above example and worked an additional 100 hours between 3 years and 8 days and 4 years and 1 week, and was paid \$2.83 per hour, resulting in *Defendant* taking a tip credit of \$4.42 per hour, that individual would be owed (a) \$442.00 for the first block of time and (b) \$442.00 multiplied by the *Fractional Recovery Amount* for the second block of time. When the sums of (a) and (b) in this subparagraph are added together, that amount equals that individual’s *Individual Recovery Amount*;


- (iii) if an individual who was a member of only the *ETCN Rule 23 Subclass* and worked 100 hours during the *Class Period*, and was paid \$2.83 per hour, resulting in *Defendant* taking a tip credit of \$4.42 per hour, that individual would be owed \$442.00 multiplied by the *Fractional Recovery Amount* to determine their "*Individual Recovery Amount*."
- (3) For purposes of performing the calculations set forth in the Section 5.8(B)(2), if an individual is a member of both the *FLSA Collective* and the *ETCN Rule 23 Subclass*, their calculations shall be performed as though they were a member of the *ETCN Rule 23 Subclass* only.
- (4) The *Individual Recovery Amount* for all *Partial Settlement Class Members* will then be added together by the *Claims Administrator* to determine the "*Total Recovery Amount*."
- (5) The *Claims Administrator* will then add each *Partial Settlement Class Member's Individual Recovery Amount* to their individual portion, if any, of the *Individual FLSA Summary Judgment Back Pay Amount* determine that individual's *Partial Settlement Class Member "Settlement Payment"*.
- (6) To avoid a windfall to any individual *Partial Settlement Class Member*, no *Partial Settlement Class Member's* individual *Settlement Payment* will be higher than ten times that individual's *Estimated Settlement Payment*. Should any *Partial Settlement Class Member's* settlement payment be higher than ten times his or her *Estimated Settlement Payment*, such amount will be reduced accordingly and with such reduction redistributed to the other *Partial Settlement Class Members* on a proportionate basis. If all *Partial Settlement Class Members* are subject to the above cap, then any reduction shall be subject to a *Court-approved Cy Pres Distribution*.

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DATED: July 24, 2024

FOR DEFENDANT

DocuSigned by:

By:   
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Printed Name: Gail Sharps Myers

Title: Chief Legal Officer & Sec

APPROVED AS TO FORM BY  
DEFENDANT'S COUNSEL:

DATED: July 24, 2024



Darren W. Ford  
FARUKI PLL

DATED: \_\_\_\_\_

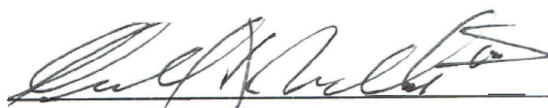
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Plaintiff Juli Wintjen

DATED: July 24, 2024

  
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Plaintiff Sarah Gower

APPROVED AS TO FORM BY PLAINTIFF'S  
COUNSEL:

DATED: July 24, 2024

  
\_\_\_\_\_  
Gerald D. Wells, III  
Robert Gray  
CONNOLLY WELLS & GRAY LLP

DATED: \_\_\_\_\_

FOR DEFENDANT

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

Printed Name: \_\_\_\_\_

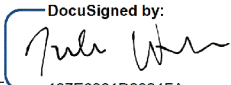
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APPROVED AS TO FORM BY  
DEFENDANT'S COUNSEL:

DATED: \_\_\_\_\_

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Darren W. Ford  
FARUKI PLL

DATED: 7/24/2024 \_\_\_\_\_

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Plaintiff Jui Wintjen

DATED: \_\_\_\_\_

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Plaintiff Sarah Gower

APPROVED AS TO FORM BY PLAINTIFF'S  
COUNSEL:

DATED: \_\_\_\_\_

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