

EXHIBIT 1

**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

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

This Collective and Class Action Partial Settlement and Release Agreement (the “*Settlement Agreement*”),¹ is entered into by and between Plaintiffs Juli Wintjen (“*Wintjen*”) and Sarah Gower (“*Gower*”) (collectively, “*Plaintiffs*”), individually and on behalf of the *ETCN Rule 23 Subclass* and the *FLSA Collective* (as defined herein) and *Defendant* (as defined herein).

1. BACKGROUND AND RECITALS

WHEREAS, *Plaintiffs* worked as servers at restaurants operated by *Defendant* in the Commonwealth of Pennsylvania. *Plaintiffs* regularly received more than \$30 a month in tips during this time-period, and *Defendant* claimed a tip-credit under 29 U.S.C. § 203(m) and 43 P.S. § 333.104 for the tips received by *Plaintiffs* towards its minimum wage obligations under federal and Pennsylvania law.

WHEREAS, on January 22, 2019, Plaintiff *Wintjen* commenced the litigation captioned as *Wintjen v. Denny’s, Inc., et al.*, No. 19-cv-00069 (W.D. Pa.) asserting various wage and hour claims against *Defendant* under the Pennsylvania Minimum Wage Act (“PMWA”) and the Fair Labor Standards Act (“FLSA”) (the “*Action*”). *Wintjen* asserted two theories of liability under each law: (1) that Denny’s failed to give her and other servers adequate notice of its intention to claim a tip credit for subminimum hourly wages paid to servers in Pennsylvania (“*Notice Claim*”); and (2) that Denny’s failed to pay servers in Pennsylvania minimum wage for time spent performing either non-tipped duties and/or excessive “side work” duties (“*80/20 Claim*”). *Defendant* denied liability and asserted various defenses in its answer to *Wintjen*’s Complaint.

WHEREAS, *Defendant* ceased operating the *Restaurants* in Pennsylvania as of August 1, 2019.

¹ Italicized words are defined herein.

WHEREAS, in accordance with the Western District of Pennsylvania's ADR requirements, *Wintjen* and *Defendant* engaged in private mediation before Carol Katz, Esq., in September 2019. No settlement was reached. Thereafter, and pursuant to the Court's scheduling order, *Wintjen* and *Defendant* began discovery. During the initial phase of discovery, *Defendant* produced thousands of pages of documents, *Wintjen* deposed a Rule 30(b)(6) witness, and *Defendant* deposed *Wintjen*.

WHEREAS, after completing the initial phase of discovery, *Wintjen* and *Defendant* filed cross-motions for summary judgment. On February 25, 2021, the Court granted summary judgment on *Wintjen*'s individual FLSA Notice Claim and denied summary judgment as to *Wintjen*'s individual FLSA 80/20 Claim and PMWA claims. See *Wintjen v. Denny's, Inc.*, No. 19-CV-00069, 2021 U.S. Dist. LEXIS 35199 (W.D. Pa. Feb. 25, 2021).

WHEREAS, after the Court's February 25, 2021 summary judgment order, *Wintjen* and *Defendant* participated in private mediation with mediator Steven Rottman, Esq., in April 2021. No settlement was reached. Following the mediation, *Wintjen* moved for conditional certification of an FLSA collective action for both the FLSA Notice Claim and the FLSA 80/20 Claim, and for class certification of her PMWA Notice Claim. The Court conditionally certified an FLSA collective action of *Wintjen*'s FLSA Notice and 80/20 Claims ("*FLSA Collective*") and certified a Fed. R. Civ. P. 23 class action of her PMWA Notice Claim on November 18, 2021 ("*PMWA Class*"). See *Wintjen v. Denny's, Inc.*, No. 19-CV-00069, 2021 U.S. Dist. LEXIS 222676 (W.D. Pa. Nov. 18, 2021). The Court also equitably tolled the limitations period for collective members to file an FLSA claim from March 9, 2020 to March 16, 2021. *Id.* *Defendant* petitioned the U.S. Court of Appeals for the Third Circuit for discretionary review of the Rule 23 class certification order, which petition the Third Circuit denied. *Wintjen v. Denny's, Inc.*, No. 21-8051, 2022 U.S. App. LEXIS 15132 (3d Cir. Jan. 12, 2022).

WHEREAS, the period for joining the collective action commenced on January 18, 2022 and ran until March 18, 2022. During that time, 113 former Denny's servers filed a *Consent to Sue* to join the collective action. One additional *Consent to Sue* was filed after the March 18, 2022 deadline, and the Court granted leave to three other former servers to file consent forms after the March 18, 2022 deadline.

WHEREAS, the "Consent Form" authorized by the Court and executed by individuals desiring to join the collective action specifically stated that the individual "authorize[d] the representative Plaintiff to make decisions on [their] behalf concerning the litigation . . . including any settlement, and to be represented by Counsel for the representative Plaintiff."

WHEREAS, the notice and opt-out period of the *PMWA Class* commenced on March 25, 2022 and continued up to, and including, May 24, 2022. Nine individuals submitted a Request for Exclusion from a Class Action ("*Exclusion Request*"). Upon *Wintjen*'s motion, the Court struck the *Exclusion Requests* of two of the nine individuals, on the ground that they had been erroneously submitted.

WHEREAS, on May 18, 2022, *Defendant* filed a motion to exclude 43 former servers who had filed Consent Forms on the ground that their claims were time-barred under the FLSA.

Wintjen contemporaneously filed a *Motion for Finding of Willfulness* regarding the *FLSA Collective's* Notice and 80/20 Claims ("*Willfulness Motion*"). The Court granted *Defendant's* motion in part and excluded 19 former servers from the collective. The Court denied *Wintjen's Willfulness Motion*.

WHEREAS, after substantial arm's-length settlement negotiations, *Wintjen* and *Defendant* reached a partial settlement to resolve the *FLSA Collective's* 80/20 Claims, and *Wintjen's* individual PMWA 80/20 Claim, which settlement was approved by the Court on June 6, 2023 ("*FLSA 80/20 Settlement*").

WHEREAS, with the submission of the *FLSA 80/20 Settlement* to the Court, *Wintjen* moved to modify and for final certification of the *FLSA Collective* as to the remaining *FLSA Notice Claim* ("*Motion for Final Collective Certification*"), by which *Wintjen* sought to exclude from the *FLSA Collective* members for whom *Defendant* had a signed *ETCN Form*. *Defendant* moved to decertify the *PMWA Class* ("*Motion to Decertify*").

WHEREAS, in response to *Defendant's Motion to Decertify*, *Wintjen* opposed decertification and sought a modification of the *PMWA Class*, seeking to exclude all class members for whom *Defendant* had a signed *ETCN Form*.

WHEREAS, the Court granted *Wintjen's Motion for Final Collective Certification*, and denied *Defendant's* Motion to Decertify. *Wintjen* conceded, and the Court found, the *ETCN Form* provided adequate notice for purposes of compliance with the FLSA and PMWA's tip-credit notification requirements. The Court therefore modified the *FLSA Collective* to exclude tipped employees "*for whom Defendant does not have an executed copy of the 2011 Employee Tip Credit Notification Form*" ("*Modified FLSA Collective*") and similarly modified the *PMWA Class* to exclude such former servers ("*Modified PMWA Class*").

WHEREAS, *Wintjen* and *Defendant* filed cross-motions for summary judgment on August 7, 2023.

WHEREAS, on February 22, 2024, the Court issued an order granting in part, and denying in part, *Wintjen's* motion for summary judgment, and denied *Defendant's* motion for summary judgment ("*Order on Cross-Motions for S.J.*"). The Court amended its Order on Cross-Motions for S.J. on March 15, 2024.

WHEREAS, under the Court's *Order on Cross-Motions for S.J.*, as amended, the Court held as follows: (1) the *Defendant* violated the FLSA and PMWA by failing to provide notice in conformity with § 203(m) with respect to those employees employed between January 22, 2016 and August 1, 2019 whose names do not appear on the *ETCN List*; (2) an issue of material fact existed as to whether the members of the *Modified FLSA Collective* and *Modified PMWA Class* whose names appear on the *ETCN List* received the *ETCN Form*; (3) an issue of material fact existed as to whether *Defendant's* violations were willful within the meaning of the FLSA; (4) an issue of material fact existed as to whether members of the *Modified FLSA Collective* were entitled to liquidated damages.

WHEREAS, following the *Order on Cross-Motion for S.J.*, the Court set a trial date of April 29, 2024.

WHEREAS, on March 18, 2024, *Wintjen* and *Defendant* participated in an all-day mediation before Michael Russell, Esq., which resulted in the partial settlement memorialized in this *Settlement Agreement* constituting a lump sum payment by *Defendant* to resolve the claims of the *FLSA Collective* and *ETCN Rule 23 Subclass*. The partial settlement, memorialized herein, eliminated the remaining issues that the Court deemed triable to a jury, other than the amount of damages.

WHEREAS, *Plaintiffs'* decision to settle was influenced in material respect by the recognition that the issue of whether individuals whose names appear on the *ETCN List*, submitted to the Court as Exhibit 5 to the Joint Stipulated Facts (ECF No. 239-1), may create class/collective certification issues moving forward;

WHEREAS, *Defendant* continues to deny any liability or wrongdoing of any kind associated with any and all claims alleged in the *Action*, and, for any purpose other than settling the *Modified FLSA Collective* and *ETCN Rule 23 Subclass*, further denies that this *Action* is appropriate for collective or class action treatment. *Defendant* contends, among other things, that it complied at all times with all applicable state and federal laws. *Defendant* is entering this *Settlement Agreement* to eliminate the burden, risk, and expense of further litigation of the claims of the *Modified FLSA Collective* and *ETCN Rule 23 Subclass*. This *Settlement Agreement* and all related documents are not and shall not be construed as an admission by *Defendant* or any of the Released Parties (as defined below) of any fault, liability, or wrongdoing, which *Defendant* expressly denies, nor as a waiver of *Defendant's* right to appeal any and all legal and factual issues related to the claims not being settled by this *Settlement Agreement*.

WHEREAS, to avoid any issues moving forward with the partial settlement, *Wintjen* determined that it would be in the best interests of the *Modified FLSA Collective* and *ETCN Rule 23 Subclass* to request that the Court appoint a substitute representative for the *Modified FLSA Collective* and *ETCN Rule 23 Subclass* for purposes of settlement. *Wintjen* would remain as the representative of the *Modified PMWA Class*; would not be a party to this *Settlement Agreement* for any purpose other than for purposes of severing her individual FLSA Notice Claim from the *FLSA Collective* and will not obtain any release or other consideration that could constitute a settlement or otherwise prejudice her Notice Claim under either the FLSA or PMWA.

WHEREAS, *Defendant*, for settlement purposes only, does not object to the substitution of *Plaintiff Gower* as the representative of the *Modified FLSA Collective* and *ETCN Rule 23 Subclass*.

WHEREAS, *Defendant* has indicated that it intends to appeal the Court's decision regarding, *inter alia*, the granting of summary judgment as to the *Modified PMWA Class*, and as to *Wintjen's* individual FLSA Notice Claim;

WHEREAS, *Plaintiffs* and *Defendant* reached an agreement in principle for a partial settlement in this *Action* only with the assistance of the Mediator and, even then, required further

additional negotiations amongst the *Parties*;

WHEREAS, the *Parties* desire to promptly and fully resolve and settle with finality the claims of the *ETCN Rule 23 Subclass* and the *Modified FLSA Collective* without further litigation;

NOW, THEREFORE, the *Parties*, in consideration of the promises, covenants, and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

2. **DEFINITIONS**

- 2.1 ***Action.*** The legal action captioned *Wintjen v. Denny's, Inc., et al.*, No. 2:19-cv-00069-CCW (W.D. Pa.).
- 2.2 ***Appeal.*** Any appeal to the Court of Appeals for the Third Circuit filed by *Defendant* following final approval of this *Settlement*. Such *Appeal* shall not include an appeal from the *Court's Final Approval Order*.
- 2.3 ***Attorney's Costs.*** An amount as approved by the *Court* at the *Final Approval Hearing*. *Class Counsel* acknowledges and agrees their request for costs shall not exceed twenty-six thousand and 00/100 dollars (\$26,000.00).
- 2.4 ***Attorney's Fees.*** The total amount of *Class Counsel's* attorneys' fees approved by the *Court*.
- 2.5 ***Attorney's Fees' Order.*** An order entered by the *Court* regarding the issue of *Attorney's Fees*.
- 2.6 ***Bar Date.*** The date by which a *FLSA Collective* member or *ETCN Rule 23 Subclass* member must submit any of the following to the *Claims Administrator*: (i) an objection; (ii) a *Request for Exclusion* from the *ETCN Rule 23 Subclass*; (iii) a withdraw of their *Consent to Sue* opting into the *FLSA Collective*; and/or (iv) a declaration contesting the validity of the *Claims Administrator's* calculations regarding that individual's *Estimated Settlement Payment*. The Parties agree that the *Bar Date* shall be forty-five (45) days after the mailing of the Notice Packet.
- 2.7 ***CAFA.*** The Class Action Fairness Act.
- 2.8 ***Claims Administrator.*** The *Parties* agree to utilize the third-party provider who facilitated notice in the *Action*, RG2 Claims Administration LLC, a claims-administration firm capable of providing appropriate and timely administrative assistance in administering the settlement of the *Action*.
- 2.9 ***Class Counsel.*** Connolly Wells & Gray, LLP and Lynch Carpenter LLP.

- 2.10 Class Notice.** The notice substantially in the form of Exhibit A to be directed to the members of the *Partial Settlement Class*. The purpose of the *Class Notice* is to inform members of the *FLSA Collective* and *ETCN Rule 23 Subclass* of the resolution of their claims in the *Action* and the material terms of this *Settlement Agreement*.
- 2.11 Class Payment.** The portion of an individual *Settlement Payment* that a *Partial Settlement Class* member will receive pursuant to the *Settlement Agreement* for the release(s) set forth in this *Settlement Agreement*.
- 2.12 Class Period.** The Parties stipulate and agree that January 22, 2016 through August 1, 2019 shall be the class period for the *ETCN Rule 23 Subclass* and that the class period for the *FLSA Collective* shall be four (4) years and one (1) week preceding the date each member's Consent to Sue form was filed with the Court through their last date of employment at *Defendant's Restaurants*.
- 2.13 Complaint.** The complaint filed in this *Action* on January 22, 2019.
- 2.14 Consent to Sue.** Consent to Sue shall mean the *Court* authorized forms filed by the members of the *FLSA Collective* with the *Court* to indicate their desire to affirmatively assert their *FLSA* claims and join this *Action*.
- 2.15 Court.** The United States District Court for the Western District of Pennsylvania.
- 2.16 Cy Pres Distribution.** Any and all funds that, pursuant to the terms of this *Settlement*, require redistribution or distribution to a *cy pres* recipient(s) pursuant to Section 5.14 of this *Settlement Agreement*.
- 2.17 Defendant or Denny's.** Defendant or Denny's means the defendant in this *Action*.
- 2.18 Defendant's Counsel or Defense Counsel.** Defendant's Counsel means Darren Ford of Faruki PLL, and Kent Wellington, Michael Roberts, and Kellie Kulka of Bricker Graydon LLP.
- 2.19 Dispute Form.** The form used by a *Partial Settlement Class Member* to dispute the number of hours worked for Defendant during the applicable period covered by this *Settlement Agreement*. The *Dispute Form* shall be included in the *Notice Packet*. An exemplar of the *Dispute Form* is attached hereto as Exhibit G.
- 2.20 Effective Date.** The first day after the *Court's Final Approval Order* approving the *Settlement* set forth in this *Settlement Agreement* becomes *Final*.
- 2.21 Estimated Class Payment.** "Estimated Class Payment" will have the meaning set forth in Section 5.8 (A)(5).
- 2.22 Estimated Individual Recovery Amount.** "Estimated Individual Recovery Amount" will have the meaning set forth in Section 5.8 (A)(2).

- 2.23 *Estimated Net Settlement Amount.*** “Estimated Net Settlement Amount” will have the meaning set forth in Section 5.8 (A)(1).
- 2.24 *Estimated Settlement Payment.*** “Estimated Settlement Payment” will have the meaning set forth in Section 5.8 (A).
- 2.25 *Estimated Total Recovery Amount.*** “Estimated Total Recovery Amount” will have the meaning set forth in Section 5.8 (A)(3).
- 2.26 *ETCN Form.*** The “Employee Tip Credit Notification” form distributed by *Defendant* on or about July 2011 to employees for whom *Defendant* intended to claim a tip-credit under 29 U.S.C. § 203(m). An example of that form is attached hereto as Exhibit B. The *ETCN Form* was previously produced to the *Court*. See ECF No. 239-1.
- 2.27 *ETCN List.*** The list of individuals *Defendant* employed in the Commonwealth of Pennsylvania to whom *Defendant* asserts it sent an *ETCN Form*. The *ETCN List* was previously produced to the *Court*. See ECF No. 239-1.
- 2.28 *ETCN Rule 23 Subclass.*** All *Rule 23 Class Members* identified on Exhibit A submitted to the *Court* on March 14, 2024. For sake of completeness, that list is attached hereto as Exhibit C.
- 2.29 *Expiration Period.*** 180 days after the mailing of the *Settlement Payments* to the *Partial Settlement Class Members*.
- 2.30 *Final.*** With respect to any judicial ruling or order regarding this *Settlement*, an order that is final for purposes of 28 U.S.C. § 1291, and (a) for which the time has expired to file an appeal, motion for reconsideration or clarification, motion for re-argument, motion for rehearing, petition for a writ of certiorari or other writ (“*Review Proceeding*”) with respect to such judicial ruling or order with no such *Review Proceeding* having been filed; or (b) if a *Review Proceeding* has been filed with respect to such judicial ruling or order, (i) the judicial ruling or order has been affirmed without material modification and with no further right of review, or (ii) such *Review Proceeding* has been denied or dismissed with no further right of review.
- 2.31 *Final Approval Hearing.*** The hearing scheduled by the *Court* to decide whether to approve the *Settlement* as fair, reasonable, and adequate pursuant to Fed. R. Civ. P. 23. The *Parties* agree to attempt to have *Final Approval Hearing* scheduled between 90 and 120 days after entry of the *Preliminary Approval Order*, so as to provide adequate time for notice to the *Partial Settlement Class Members*.
- 2.32 *Final Approval Motion.*** “Final Approval Motion” will have the meaning set forth in Section 5.12.
- 2.33 *Final Approval Order.*** The document substantially in the form attached hereto as Exhibit D, which will be submitted to the *Court* by the *Plaintiff Gower* and *Defendant* to seek (1)

approval of this *Settlement Agreement* on the terms provided herein (or as the same may be modified by subsequent mutual agreement of the *Parties* subject to approval of the *Court*), adjudging such terms to be adequate, fair and reasonable, and in the best interests of *Plaintiff Gower* and *Partial Settlement Class Members*; (2) certification of the *ETCN Rule 23 Subclass* for settlement purposes only; (3) approval of *Class Counsel's* application for a *Service Payment* to *Plaintiff Gower*; and (4) dismissal of the claims of the *FLSA Collective* and *ETCN Rule 23 Subclass* with prejudice.

- 2.34 *Final Effective Date.*** The date on which the *Settlement* becomes *Final* and all *Settlement Preconditions* have either been satisfied or waived in accordance with this *Settlement Agreement*.
- 2.35 *FLSA Collective.*** *Wintjen, Plaintiff*, and all members of the *FLSA* collective action finally certified by the *Court* on July 13, 2023 (ECF No. 245). For purposes of effectuating the *Settlement* and entry of the *Stipulation*, *Wintjen* agrees to seek to have the *Court* sever her *FLSA* claim from the *FLSA Collective*.
- 2.36 *FLSA Collective Payment.*** The portion of an individual *Settlement Payment* that an *FLSA Collective* member will receive pursuant to the *Settlement Agreement* for the release of *FLSA* claims.
- 2.37 *FLSA Collective Period.*** For each member of the *FLSA Collective*, the time period from four (4) years and one (1) week preceding the date of the filing of the individual member of the *FLSA Collective's Consent to Sue* with the *Court*.
- 2.38 *Gross Settlement Payment.*** "Gross Settlement Payment" will have the meaning set forth in Section 5.8 (B).
- 2.39 *Individual Recovery Amount.*** "Individual Recovery Amount" will have the meaning set forth in Section 5.8 (B)(2).
- 2.40 *Mediator.*** Michael Russell, Esq.
- 2.41 *Net Settlement Amount.*** "Net Settlement Amount" will have the meaning set forth in Section 5.8 (B)(1).
- 2.42 *Notice Packet.*** The (i) *Class Notice* mailed to *Partial Settlement Class Members* in accordance with the *Settlement Agreement*; (ii) the *Estimated Settlement Payment* for the individual *Tipped Employee* to whom the *Class Notice* was mailed; and (iii) the required deductions, if any, set forth within *Defendant's* payroll records (e.g., garnishments, tax liens, child support). The *Notice Packet* sent via U.S. mail shall also include a *Request for Exclusion* form and *Dispute Form*.
- 2.43 *Notice Period.*** The period of time from the date the *Claims Administrator* mails the *Notice Packet* through the *Bar Date*.

- 2.44 *Partial Settlement Class.*** Collectively, the *FLSA Collective* and the *ETCN Rule 23 Subclass*.
- 2.45 *Partial Settlement Class Members.*** The individuals comprising the *Partial Settlement Class*, and who do not affirmatively elect to withdraw their *Consent to Sue* form with the *Court* prior to the *Bar Date* or affirmatively opt-out of the *ETCN Rule 23 Subclass*. *Wintjen* agrees to seek to have the *Court* sever her *FLSA* claim from the *FLSA Collective* and, accordingly, is expressly excluded from this definition.
- 2.46 *Parties.*** *Plaintiff* and *Defendant* and, in the singular, “Parties” refers to any of them, as the context makes apparent.
- 2.47 *Plaintiff Gower or Gower.*** *Plaintiff Sarah Gower*, who, by the terms of this *Settlement Agreement*, and subject to *Court* approval, shall be appointed the representative of the *FLSA Collective* and the *ETCN Rule 23 Subclass*.
- 2.48 *Plaintiff Wintjen or Wintjen.*** *Juli Wintjen*, the named plaintiff of the *Rule 23 Class*.
- 2.49 *Preliminary Approval Order.*** The document substantially in the form attached hereto as Exhibit E, which will be submitted to the *Court* by the *Plaintiff Gower* and *Defendant* to seek (a) preliminary approval of this *Settlement Agreement*; (b) dissemination of *Class Notice*; (c) approval of the proposed form of *Class Notice*; (d) certification of a Fed. R. Civ. P. 23(b)(3) class for settlement purposes only; (e) appointment of *Plaintiff Gower* as class representative and the law firms Connolly Wells & Gray, LLP and Lynch Carpenter LLP as *Class Counsel*; and (f) a finding that the proposed manner of serving the *class Notice* to the *Partial Settlement Class Members* is the best notice practicable under the circumstances.
- 2.50 *Prior Partial FLSA Settlement.*** The partial settlement entered between *Wintjen* and *Defendant*, regarding the *FLSA 80/20 Claim* and *Wintjen’s* individual *PMWA 80/20 Claim*, which was approved by the *Court* on or about June 6, 2023.
- 2.51 *Released Claims.*** “Released Claims” will have the meaning set forth in Section 6.1.
- 2.52 *Released Persons.*** *Defendant* and its past, present, and future parent companies, affiliates, subsidiaries, divisions, predecessors, successors, partners, owners, joint venturers, affiliated organizations, insurers, reinsurers and assigns, and each of their past, present and future shareholders, officers, directors, supervisors, managers, trustees, agents, employees, attorneys, contractors, representatives, divisions, units, branches and any other persons or entities acting on their behalf.
- 2.53 *Releasing Parties.*** “Releasing Parties” will have the meaning set forth in Section 6.5.
- 2.54 *Request for Exclusion.*** The document substantially in the form attached hereto as Exhibit F, which will be mailed with the Notice Packet wherein a *Partial Settlement Class Member* who worked for *Defendant* during the *Class Period* and would otherwise be a member of

the *ETCN Rule 23 Subclass* requests to be excluded from the terms of this *Settlement*. The *Parties* stipulate and agree that if a member of the *FLSA Collective* files a *Request for Exclusion*, such a filing shall constitute a request to withdraw their *Consent to Sue*.

- 2.55 *Residual FLSA Amount.*** Any amount determined by the *Claims Administrator* as unclaimed under the *Prior Partial FLSA Settlement* and, pursuant to that settlement agreement, eligible to be remitted to *Defendant*.
- 2.56 *Restaurants.*** The restaurant establishments operated by *Defendant* and doing business as “Denny’s” in the Commonwealth of Pennsylvania between January 22, 2016 and August 1, 2019.
- 2.57 *Review Proceeding.*** “Review Proceeding” will have the meaning set forth in Section 2.30.
- 2.58 *Rule 23 Class.*** *Wintjen* and all members of the class certified by the *Court* under Fed. R. Civ. P. 23 on November 18, 2021 (ECF No. 106), and as further modified by the *Court* by its July 13, 2023, Order (*see* ECF No. 245). Excluded from this class, however, are all members of the *ETCN Rule 23 Subclass*.
- 2.59 *Rule 23 Class Members.*** All members of the *Rule 23 Class*.
- 2.60 *Service Payment.*** The amount to be approved by the *Court* for payment to *Plaintiff Gower* in recognition of her efforts in assisting in the prosecution of this *Action*, which amount shall be deducted from the *Settlement Amount*. The basis for this *Service Payment* shall be set forth in *Plaintiff’s* motion for final approval. *Defendant* stipulates and agrees not to oppose the request for an award of a *Service Payment* to *Plaintiff Gower* provided the amount sought does not exceed \$2,500.
- 2.61 *Settlement.*** The partial resolution of the *Action* pursuant to the agreement of the *Parties* on the terms and conditions as set forth in this *Settlement Agreement*.
- 2.62 *Settlement Agreement.*** This *Settlement Agreement*, including any modifications or amendments adopted pursuant to Section 10.14.
- 2.63 *Settlement Amount.*** The \$437,500.00 payment that *Defendant* will pay to settle the claims of the *FLSA Collective* and *ETCN Rule 23 Subclass*, as described in this *Settlement Agreement* and inclusive of any *Service Payment* as well as the *Claims Administrator’s* fees and expenses, but exclusive of *Class Counsel’s Attorney’s Fees* and *Attorney’s Costs*. Under no circumstances whatsoever shall any portion of the *Settlement Amount* revert to *Defendant*.
- 2.64 *Settlement Attorney’s Fees.*** The amount of *Class Counsel’s Attorney’s Fees* attributable to the *Settlement Agreement* as determined in accordance with Section 5.16.
- 2.65 *Settlement Check.*** Checks issued to *Partial Settlement Class Members* in the amount of their individual *Settlement Payment*. Each *Settlement Check* shall contain release language

on its back in conformity with Section 4.14.

- 2.66 ***Settlement Post-Conditions.*** Each of conditions and obligations set forth in Section 4 of this *Settlement Agreement* that must either be satisfied or waived in writing by the *Party* entitled to the benefit of the condition or obligation.
- 2.67 ***Settlement Preconditions.*** Each of the conditions and obligations set forth in Section 3 of this *Settlement Agreement* that must either be satisfied or waived in writing by the *Party* entitled to the benefit of the condition or obligation.
- 2.68 ***Settlement Payment.*** The payment made to an individual *Partial Settlement Class Member* for their corresponding *Released Claims* under the *Settlement*.
- 2.69 ***Total Recovery Amount.*** “Total Recovery Amount” will have the meaning set forth in Section 5.8 (B)(3).

3. **SETTLEMENT PRECONDITIONS**

The *Parties* stipulate and agree that each condition set forth in this Section is a material term. Except as otherwise provided in this *Settlement Agreement*, the *Parties* will use reasonable efforts to cause each of the following conditions to occur and will support approval of the *Settlement* before the *Court*.

- 3.1 ***CAFA Notice.*** At its own expense, *Defendant* shall provide any notice required under *CAFA* regarding the *Settlement*.
- 3.2 ***Preliminary Approval of Settlement Agreement by the Court.*** As soon as practicable, but no later than June 7, 2024, *Plaintiff Gower* and *Defendant* will submit this *Settlement Agreement* (including all exhibits) to the *Court* for preliminary approval and will jointly request entry of a *Preliminary Approval Order* substantially in the form attached hereto as Exhibit E.
- 3.3 ***Substitution of Class and Collective Representative.*** Contemporaneous with the submission of the *Settlement Agreement* to the *Court*, *Plaintiff Wintjen* will move the *Court*, through counsel, to substitute *Plaintiff Gower* for her as the representative of the *FLSA Collective* and *ETCN Rule 23 Subclass* for settlement purposes only. For settlement purposes only, and to effectuate this *Settlement Agreement*, *Defendant* will not object to the substitution. Further, the *Parties* stipulate and agree that *Plaintiff Wintjen*’s *FLSA* claim shall be severed from the *FLSA Collective* and is not being released by this *Settlement*.
- 3.4 ***Certification of ETCN Rule 23 Subclass.*** *Plaintiff Gower*, through *Class Counsel*, shall move the *Court* for the certification of a subclass pursuant to Fed. R. Civ. P.23(c)(5) of the *ETCN Rule 23 Subclass* for the period January 22, 2016, through August 1, 2019, with *Plaintiff Gower* as class representative. For settlement purposes only, and to effectuate this *Settlement Agreement*, *Defendant* will not object to the certification of a subclass of the

ETCN Rule 23 Subclass with Plaintiff Gower as sole class representative, as set forth herein.

- 3.5 **Submission of Proposed Schedule.** Prior to the *Court* entering a *Final Approval Order*, *Plaintiff Wintjen* and *Defendant* will request that the *Court* set a briefing schedule for all issues the *Court* must resolve prior to entry of final judgment on the *Rule 23 Class's* claims, and provide that such briefing shall be complete before the *Final Approval Hearing*. The *Parties* agree that the *Court* may not enter final judgment on the *Rule 23 Class's* claims until after it has entered the *Final Approval Order*, and that either *Party* shall have the right to terminate this *Settlement* pursuant to Section 8 in the event that occurs.
- 3.6 **Plaintiffs Seeking Entry of Attorney's Fees' Order.** Prior to the *Court* entering a *Final Approval Order*, *Plaintiffs* will seek to have the *Court* enter the *Attorney's Fees' Order*. The *Parties* shall work cooperatively to have the *Court* set a briefing schedule on the issue of *Attorney's Fees* so that the issue is fully briefed prior to the *Final Approval Hearing*. The *Parties* agree that the *Court* may not enter any order regarding the issue of *Attorney's Fees* until after the *Court* enters the *Final Approval Order*, and that either *Party* shall have the right to terminate this *Settlement* pursuant to Section 8 in the event an order on the issue of *Attorney's Fees* is entered prior to the entry of the *Final Approval Order*.
- 3.7 **Entry of Final Approval Order by the Court.** *Plaintiff Gower* and *Defendant* will jointly request that the *Court* schedule a *Final Approval Hearing* between 90 and 120 calendar days after entry of the *Preliminary Approval Order*. At the *Final Approval Hearing*, *Plaintiff Gower* and *Defendant* will jointly move for entry of a *Final Approval Order*, substantially in the form attached hereto as Exhibit D.
- 3.8 **Defendant Paying the Settlement Amount.** No later than five (5) business days after the *Final Approval Order* becomes *Final*, *Defendant* shall pay the *Settlement Amount* to the *Claims Administrator*.
- 3.9 **Final Approval Order Becoming Final.** If the *Court* denies approval of any material term of the *Settlement*, whether initially, or if a *Review Proceeding* has been instituted regarding this *Settlement*, then after the conclusion of any *Review Proceeding*, any *Party* may terminate the *Settlement Agreement* under Section 9. If the *Court* does not enter the *Final Approval Order* or if the *Final Approval Order* does not become *Final* then any *Party* may terminate this *Settlement Agreement* pursuant to Section 9.

4. **SETTLEMENT POST-CONDITIONS**

The *Parties* stipulate and agree that each of the *Settlement Post-Conditions* set forth in this Section is a material term. Except as otherwise provided in this *Settlement Agreement*, *Defendant* represents and agrees that it will use its best efforts to effectuate each of the following *Settlement Post-Conditions* to occur by the deadlines set forth herein and will support these terms before the *Court*.

- 4.1 **Payment of Fees and Costs.** *Defendant* agrees to promptly pay the amount of *Settlement*

Attorney's Fees and Attorney's Costs, once determined by the *Court* pursuant to the procedure set forth in Section 5.16.

5. TERMS OF SETTLEMENT

- 5.1 *Settlement Amount.*** *Defendant* will pay the *Settlement Amount*, which includes any *Service Payment* and the *Claims Administrator's* fees and expenses under the *Settlement Agreement*. Also being paid from the *Settlement Amount* will be all *ETCN Rule 23 Subclass* members' state-law claims and all *FLSA Collective* members' FLSA claims. In return for the *Settlement Amount*, *Defendant* will obtain the releases described in Section 6. In return for the releases provided herein, in no event shall *Defendant* be obligated to contribute any monies in excess of the *Settlement Amount* except as specifically provided in this *Settlement Agreement*.
- 5.2 *Class Certification.*** In connection with preliminary and final approval of the proposed *Settlement*, *Plaintiff Gower* will, through *Class Counsel*, seek orders (preliminary and final, respectively) certifying the *ETCN Rule 23 Subclass* pursuant to Fed. R. Civ. P. 23(b)(3) & (c)(5).
- 5.3 *Preliminary Approval.*** The *Parties* will use reasonable efforts to enable *Plaintiff Gower* to file a motion with the *Court* for the issuance of a *Preliminary Approval Order*, substantially in the form attached hereto as Exhibit E, which, among other things, will (a) preliminarily approve this *Settlement Agreement*; (b) direct the time and manner of the *Notice Packet* to be served upon the putative *Partial Settlement Class Members* who may be entitled to payment under this *Settlement Agreement*; (c) find that the proposed form of *Class Notice* fairly and adequately (i) describes the terms and effect of this *Settlement Agreement*, (ii) provides notice to those putative *Settlement Class Members* who may receive a monetary benefit from this *Settlement* of the time and place of the *Final Approval Hearing*, and (iii) describes how the recipients of the *Class Notice* may object to or request to be excluded from the *ETCN Rule 23 Subclass*; and (d) find that the proposed manner of serving the *Class Notice* to the putative *Partial Settlement Class Members* is the best notice practicable under the circumstances.
- 5.4 *Cooperation.*** The *Parties* will, in good faith, take reasonable steps to (a) secure expeditious entry of the *Preliminary Approval Order* by the *Court*; (b) seek a date for the *Final Approval Hearing* between 90 and 120 days calendar days after entry of the *Preliminary Approval Order*; and (c) seek entry of the *Final Approval Order*.
- 5.5 *Retention of Claims Administrator.*** The *Claims Administrator* will be responsible for the claims-administration process and distribution of the *Class Notice* and *Settlement Payments* as provided herein. *Defendant* will cooperate with the *Claims Administrator* and assist it in any reasonable way possible in administering this *Settlement Agreement*. *Claims Administrator* fees are to be paid out of the *Settlement Amount*. The *Claims Administrator* will provide *Class Counsel* and *Defense Counsel* with a final bill of its fees no later than ten (10) days before the *Final Approval Hearing*.

- 5.6 Class Information.** Within fourteen (14) calendar days after the *Court* enters a *Preliminary Approval Order*, *Defendant* will provide the *Claims Administrator* with a list of all *Settlement Collective/Class Members* that contains the following information: name, Social Security Number, the dates of employment by *Defendant*, and any required deductions set forth within *Defendant's* payroll records (e.g., garnishments, tax liens, child support) that were current as of the end of the *Class Period*. *Defendant* will also provide the *Claims Administrator* with all time-keeping records previously produced to *Class Counsel* for the *Settlement Collective/Class Members*. *Defendant* will also provide *Class Counsel* with a list, in electronic form, containing the following information for each of the *Settlement Collective/Class Members*: name, last known address, and email address (if *Defendant* has it within their records). The *Parties* stipulate and agree that they will each cooperate and use their best efforts to provide the *Claims Administrator* with any information the *Claims Administrator* requests in order to facilitate its duties and obligations set forth in this *Settlement Agreement*.
- 5.7 Plaintiff.** *Plaintiff Gower* shall be considered both an *ETCN Rule 23 Subclass* member and *FLSA Collective* member for all purposes of this *Settlement Agreement*. No further action shall be necessary for *Plaintiff Gower* to receive her *Settlement Payment*. *Wintjen* shall not be a party to this *Settlement Agreement* for any purpose regarding the resolution of her claims, *Rule 23 Class* claims, or the payment of any funds, and shall remain as class representative of the *Rule 23 Class*, following the creation of the *ETCN Rule 23 Subclass* by the *Court*. For the avoidance of doubt, nothing in this *Settlement Agreement* shall bar or preclude *Plaintiff Wintjen* from seeking a service award from the *Court* prior to entry of final judgment on the *Rule 23 Class* claims, or *Defendant* from opposing such an award.
- 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) \$100 for each member of the *FLSA Collective*. The resulting number will be referred to as the “*Estimated Net Settlement Amount*.”
 - (2) For each putative *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. Individuals who are members of the *ETCN Rule 23 Subclass* will then have this total multiplied by 0.5 so as to account for

litigation risk that individuals who are only members of the *FLSA Collective* do not have. To expedite this calculation, the *Claims Administrator* shall use either its prior calculations performed during this course of litigating this *Action* or *Defendant's* total sent pursuant to Section 5.6, whichever is higher, before, if necessary, multiplying the number by 0.5. An example of this calculation is as follows: if an individual who was only a member of the *FLSA Collective* 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. In contrast: if an individual who was a member of the *ETCN Rule 23 Subclass* 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 *Partial Settlement Class Member* would be owed \$442.00 multiplied by 0.5 resulting in a final amount of \$221.00. This number will be referred to as the "*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*." The *Estimated Net Settlement Amount* will then be divided by the *Estimated Total Recovery Amount*.
- (5) The *Claims Administrator* will then multiply the resulting fractional amount by each putative *Partial Settlement Class Member's Estimated Individual Recovery Amount* to determine that individual's *Partial Settlement Class Member "Estimated Settlement Payment."*
- (6) For each putative *Partial Settlement Class Member* who is also a member of the *FLSA Collective*, the *Claims Administrator* will then add \$100 to that individual's *Estimated Settlement Payment* to obtain the *Partial Settlement Class Member's "Estimated Class Payment."* For individuals who are not *FLSA Collective* members, their *Estimated Settlement Payment* shall be the same as their *Estimated Class Payment*.
- (7) 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) \$100 for each member of the *FLSA Collective*. 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. Individuals who are members of the *ETCN Rule 23 Subclass* will then have this total multiplied by 0.5 so as to account for litigation risk that individuals who are only members of the *FLSA Collective* do not have. To expedite this calculation, the *Claims Administrator* shall use either its prior calculations performed during this course of litigating this *Action* or *Defendant's* total sent pursuant to Section 5.6, whichever is higher, before, if necessary, multiplying the number by 0.5. The *Claims Administrator* will then add the total amounts owed for all hours worked for each *Partial Settlement Class Member* under the “05-Server” job code. This number will be referred to as the “*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 *Net Settlement Amount* will be divided by the *Total Recovery Amount*.
 - (6) The resulting fractional amount will then be multiplied by an *Individual Recovery Amount* to determine that *Partial Settlement Class Member's* “*Gross Settlement Payment*.”
 - (7) For each *Partial Settlement Class Member* who is also a member of the

FLSA Collective, the *Claims Administrator* will then add \$100 to that individual's *Gross Settlement Payment* to obtain the *Partial Settlement Collective/Class Member's "Class Payment."* For individuals who are not *FLSA Collective* members, their *Gross Settlement Payment* shall be the same as their *Class Payment*.

- (8) 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*.
- (C) For purposes of performing the calculations set forth above, the *Claims Administrator* will rely on the hours recorded in *Defendant's* timekeeping system when determining the hours worked under the "05-Server" job code, except where an individual has contested the hours via the claims process contained in the *Claim Form* to the satisfaction of the *Claims Administrator*, in which case the *Claims Administrator* shall use the adjusted hours for that individual.
- (D) *Plaintiffs*, *Class Counsel*, *Defendant*, and *Defendant's Counsel* will have no responsibility for, or liability arising from, the *Claims Administrator's* calculations of the distribution of the *Settlement Amount* including, without limitation, the calculation of any *Settlement Payment*.
- (E) *Plaintiff Gower* is a member of the *ETCN Rule 23 Subclass* and *FLSA Collective* by operation of this *Settlement Agreement*. *Plaintiff Gower's Settlement Payment* will be calculated in accordance with the formula set forth above.
- (F) Ten days before the *Final Approval Hearing*, the *Claims Administrator* will certify jointly to *Class Counsel* and *Defendant's Counsel* a list of all *Partial Settlement Class Members*, indicating for each member whether they are a *ETCN Rule 23 Subclass* member, *FLSA Collective* member, or both, and the total *Settlement Payment* due to that individual pursuant to this *Settlement Agreement*. The *Claims Administrator* will also indicate whether any challenges to an *Estimated Settlement Payment* or required deduction has been received and, if so, the status of that challenge.

5.9 Class Notice.

- (A) The *Claims Administrator* will disseminate the *Class Notice* by email wherever practical. The *Claims Administrator* shall utilize email addresses provided by *Defendant*, *Class Counsel*, and/or within their possession due to the administration

of the *Prior Partial FLSA Settlement*. The *Claims Administrator* will mail the *Notice Packet* via First Class Mail to any putative *Partial Settlement Class Member* for whom the *Claims Administrator* does not have a valid email address or for whom the email notice was returned as undeliverable. The *Claims Administrator* shall disseminate the *Class Notice* within five (5) calendar days after the *Class Administrator* receives the class list and the data required to perform the preliminary calculations. The *Claims Administrator* will (among other things) provide estimated settlement payment amounts in the *Class Notice*.

- (1) The mailed version of the *Class Notice* shall be substantially in the same form as Exhibit A. The outside of the envelope shall also include the following language “Court-Authorized Notice of Settlement of Class/Collective Action Lawsuit.”
 - (2) For any putative *Partial Settlement Class Member* where *Defendant* is able to provide an email address or the *Claims Administrator* otherwise has an email address, the *Claims Administrator* shall send an email with the subject line reading “Court-Authorized Notice of Settlement of Class/Collective Action Lawsuit.” The body of the email shall identify the *Claims Administrator* and include the following language: “Denny’s, Inc. has identified you as a server in Pennsylvania during all or part of the time period January 22, 2016 and August 1, 2019. Consequently, you are entitled to receive part of a settlement claiming back pay for minimum wage. For additional information about the case (Case No.: 19-CV-00069 (W.D. Pa.)), including how to receive part of the settlement, please click on the attached link. If you cannot open this link, please contact the Claims Administrator at info@rg2claims.com. This Notice has been authorized by the United States District Court for the Western District of Pennsylvania.”
 - (3) To the extent feasible, both the *Class Notice* and the email to putative *Partial Settlement Class Members* detailed above shall include individualized passwords and links/website address to the website created by the *Claims Administrator* with a portal that will allow a putative *Partial Settlement Class Member* to review their estimated payment under the *Settlement*.
- (B) Before mailing, the *Claims Administrator* will attempt to confirm the accuracy of the addresses of each putative *Partial Settlement Class Member* through the United States Post Office’s National Change of Address (“NCOA”) database. If a *Notice Packet* is returned as undeliverable, the *Claims Administrator* will perform one skip trace and resend by First Class United States Mail the *Court-approved Class Notice* once only to those putative *Partial Settlement Class Members* for whom it obtains more recent addresses.
- (C) To the extent practicable, the *Claims Administrator* shall effectuate mailing of the

Notice Packet via U.S. Mail and email at the same time.

- (D) The *Claims Administrator* will mail a *Court*-approved *Class Notice* to any putative *Partial Settlement Class Member* who contacts the *Claims Administrator* during the time period between the initial mailing of the *Class Notice* and the *Bar Date* and requests that a *Class Notice* be re-mailed. During the *Notice Period*, except as otherwise permitted by this *Settlement Agreement*, no other communications will be sent by either *Party* to putative *Partial Settlement Class Members*. *Class Counsel* may nevertheless communicate with *Wintjen, Plaintiff*, members of the *FLSA Collective*, and respond to inquiries they receive from putative *Partial Settlement Class Members* during the *Notice Period* and otherwise communicate as permitted by this *Settlement Agreement*. For any inquiry regarding the *Action*, the *Settlement*, and/or the *Settlement Agreement*, *Defendant* shall advise that putative *Partial Settlement Class Members* are to contact *Class Counsel*.
- (E) Upon mailing of the *Notice Packet*, the *Claims Administrator* shall establish a settlement website (or a link on their existing website) to assist in providing putative *Partial Settlement Class Members* with information regarding the *Settlement*. Such website may include (i) the *Complaint*; (ii) the *Settlement Agreement*; (iii) a copy of the *Class Notice*; (iv) any orders entered by the *Court* regarding the *Settlement* subsequent to granting Preliminary Approval; and (v) a list of frequently asked questions and their corresponding answers that is mutually agreed upon by the *Parties*. Such website will be taken down within ten (10) days of the *Settlement Checks* being mailed.
- (F) The *Claims Administrator* will provide to *Defendant's Counsel* and *Class Counsel* at least once every two weeks during the *Notice Period*, a report concerning any objections raised by any putative *Partial Settlement Class Members*. Further, fourteen (14) days before the *Final Approval Hearing*, the *Claims Administrator* will provide *Defendant's Counsel* and *Class Counsel* with a cumulative report detailing any objections received from *Partial Settlement Class Members*.

5.10 Objections. Only *Partial Settlement Class Members* may object to the *Settlement*. To object to the *Settlement*, the individual must send a written objection to the *Claims Administrator* no later than the *Bar Date*. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. *Partial Settlement Class Members* who wish to object and be represented by counsel will do so at their own expense. No *Partial Settlement Class Member* will have any claim to any part of the *Settlement Amount* based, in whole or in part, on their retention of outside counsel. Should the *Claims Administrator* receive any objection, it will promptly notify *Defendant's Counsel* and *Class Counsel*, and will provide each with the contact information for the objecting *Partial Settlement Class Member*.

5.11 Opt-Out/Request for Exclusion.

- (A) For a putative *Partial Settlement Class Member* to exclude himself or herself from

the *ETCN Rule 23 Subclass* (“opt-out”), he or she must write and submit a *Request for Exclusion*. The *Parties* stipulate and agree that the following shall also constitute a valid *Request for Exclusion*: if a putative *Partial Settlement Class Member* writes the *Claims Administrator* a letter that states: “I request to be excluded from the *ETCN Rule 23 Subclass* in *Wintjen v. Denny’s, Inc.*, No. 19-00069 (W.D. Pa.). I affirm that I was employed by Defendant as a server in the Commonwealth of Pennsylvania on one or more days between January 22, 2016 through August 1, 2019, and have been identified as a member of the *ETCN Rule 23 Subclass*.” The individual who wishes to opt-out must also include his or her full name, address, and telephone number. Putative *Partial Settlement Class Members* may not opt-out by telephone, fax, or email.

- (B) The *Parties* stipulate and agree that a *Request for Exclusion* form shall also act as a notice of withdrawal for any previously filed *Consent to Sue* filed on behalf of a *FLSA Collective* member who submits said *Request for Exclusion*.
- (C) All *Requests for Exclusion* or withdrawal of a previously filed *Consent to Sue* must be submitted by the *Bar Date*.
- (D) The date of submission is deemed to be the earlier of (i) the date the form is deposited in the U.S. Mail, postage pre-paid, as evidenced by the postmark; or (ii) the date the form is received by the *Claims Administrator*.
- (E) Upon receipt of a *Request for Exclusion* or withdrawal of a previously filed *Consent to Sue*, the *Claims Administrator* will notify *Class Counsel* and *Defendant’s Counsel* and will provide *Class Counsel* with such individual’s last known telephone number.
- (F) If a fully completed and properly executed *Request for Exclusion* or notice of withdrawal of a previously filed *Consent to Sue* is not received by the *Claims Administrator* by the *Bar Date*, then that individual will be deemed to have forever waived his or her right to opt-out of the *ETCN Rule 23 Subclass* or *FLSA Collective*.

5.12 Final Approval.

- (A) *Plaintiff* will file a motion seeking final approval of the *Settlement* (“*Final Approval Motion*”) with the *Court* in accordance with the *Court’s* scheduling order. In the *Final Approval Motion*, *Plaintiff* will request that the *Court* determine, at or after the *Final Approval Hearing*: (a) whether to enter a *Final Approval Order*, substantially in the form attached as Exhibit D, (i) certifying the *ETCN Rule 23 Subclass*; (ii) granting final approval of the *Settlement*; (iii) approving *Class Counsel’s* request for reimbursement of *Attorney’s Costs* as set forth in Section 5.17 of this *Settlement Agreement*; and (iv) dismissing the claims of the *FLSA Collective* and *ETCN Rule 23 Subclass* with prejudice and entering judgment pursuant to Federal Rule of Civil Procedure 54(b); (b) whether the distribution of the *Settlement Amount* set forth in this *Settlement Agreement* should be approved or modified; and

- (c) the amount of *Service Payment*, if any, to be awarded to *Plaintiff Gower*.
- (B) The *Final Approval Motion* will ask the *Court* to (a) approve this *Settlement Agreement*; (b) certify the *ETCN Rule 23 Subclass*; and (c) approve and enforce the *Released Claims* as set forth in Section 5 of this *Settlement Agreement*.
- (C) At the *Final Approval Hearing*, *Plaintiff* and *Defendant* will request that the *Court* rule on any *Objections* to the *Settlement* by any *ETCN Rule 23 Subclass* members and find that the *Settlement* is fair, reasonable and adequate, and enter the *Final Approval Order*.
- (D) The *Parties* agree to support entry of the *Final Approval Order*, including supporting the *Settlement* through any *Review Proceeding*. *Defendant* will not take any position with respect to *Class Counsel's* request for *Attorney's Costs* or the *Service Payment*, so long as disposition of those matters is substantially in accordance with the provisions of this *Settlement Agreement*. The *Parties* otherwise covenant and agree to reasonably cooperate with one another and to take all actions reasonably necessary to effectuate the *Settlement Agreement* and to obtain a *Final Approval Order*.

5.13 Distribution of Settlement Payments to Partial Settlement Class Members.

- (A) No later than five (5) calendar days after the *Final Approval Order* becomes *Final*, *Defendant* will provide the *Claims Administrator* with the *Settlement Amount* and will pay *Class Counsel* the *Attorney's Costs* as set forth in Section 5.17.
- (B) Within fifteen (15) calendar days after receiving the *Settlement Amount*, the *Claims Administrator* will mail the *Settlement Payments* to the *Partial Settlement Class Members*. At the same time, the *Claims Administrator* will mail the *Service Payment*, if any, to *Plaintiff Gower*.
- (C) The *Parties* agree that each *Settlement Payment* will be delineated to each *Partial Settlement Class Member* as comprising two payments: (i) fifty percent (50%) will be allocated to the claims asserted in the *Action* for alleged unpaid wages and other alleged wage-related claims, and (ii) fifty percent (50%) will be allocated to the claims asserted in the *Action* for alleged liquidated damages, interest, and other relief. To the extent feasible, a *Partial Settlement Class Member* will be sent one check with such payment clearly identifying the amount allocable to (i) wages and (ii) liquidated damages/other relief.
 - (1) The parts allocated to claims for alleged unpaid wages and other alleged wage-related damages will be subject to all required employee paid payroll taxes and deductions (e.g., federal income taxes, state income taxes, employee's share of FICA taxes, and other state-specific statutory deductions) and other required deductions set forth within *Defendant's* payroll records (e.g., garnishments, tax liens, child support).

- (2) The part allocated to alleged liquidated damages and other relief will be characterized as non-wage income to the recipient and shall not be subject to any withholdings. The *Claims Administrator* will report the wage parts to each *Partial Settlement Class Member* on an IRS Form W-2 and the non-wage part on an IRS Form 1099.
 - (3) The *Claims Administrator* will be responsible for issuing the *Settlement Payment*, less required withholdings and deductions, to each *Partial Settlement Class Member* and mailing the *Settlement Checks*, W-2s and 1099s to the *Partial Settlement Class Members*.
- (D) Either on the back of each *Settlement Check* or on the documents sent with said *Settlement Check* will be the following statement: “the check must be cashed within one-hundred eighty days (180) days or it will become void.”
 - (1) If any *Settlement Check* is not cashed in the one-hundred eighty (180) day period, that *Settlement Check* will be voided, and the *Claims Administrator* will place a stop-payment on the check. *Partial Settlement Class Members* with such voided checks will have irrevocably waived any right in or claim to a *Settlement Payment*, but the *Settlement Agreement* and all releases relating to their individual *Released Claims* will nevertheless be binding upon them. Any unclaimed funds resulting from such voided *Settlement Checks* shall be part of the *Cy Pres Distribution*.
 - (2) The *Settlement Class* shall be apprised of this provision, that unclaimed funds are subject to a *Cy Pres Distribution*, in the *Class Notice*.
- (E) Neither *Defendant*, *Defendant’s Counsel*, *Class Counsel*, *Plaintiffs*, nor the *Claims Administrator* will have any liability for lost or stolen checks, for forged signatures on checks, or for unauthorized negotiation of any checks funded by any portion of the *Settlement Amount*.
- (F) Without limiting the foregoing, if a *Partial Settlement Class Member* notifies the *Claims Administrator* that he or she believes that his or her *Settlement Check* has been lost or stolen, the *Claims Administrator* will immediately notify counsel for the *Parties* and stop payment on any such check.
 - (1) If the *Settlement Check* in question has not been negotiated before the stop payment order, the *Claims Administrator* will issue a replacement check, from which the fees, if any, associated with the stop payment order will first be deducted. The *Partial Settlement Class Member* will have an additional thirty (30) calendar days to negotiate the re-issued check from the date of re-mailing.
 - (2) If any *Settlement Check* is not negotiated in that period of time, that

Settlement Check will be voided. The funds from said *Settlement Check* will be considered part of the *Cy Pres Distribution*.

- (G) In addition to the *Settlement Amount*, *Defendant* will be responsible for any and all applicable employer tax contributions associated with wage payments, including but not limited to *Defendant's* share of the FICA and FUTA taxes, with respect to the amounts treated as wages. The *Claims Administrator* will calculate the employer share of taxes and provide *Defendant* with the total employer tax contributions. *Defendant* will deposit with the *Claims Administrator* the calculated employer tax contributions before the mailing of the *Settlement Payments*.
- (H) Neither *Plaintiffs*, *Defendant*, *Class Counsel*, nor *Defendant's Counsel* has provided nor will provide any *Partial Settlement Class Members* with any advice regarding the tax consequences of this *Settlement Agreement*.

5.14 *Cy Pres Distribution.* If any portion of the *Settlement Amount* becomes, by operation of this *Settlement Agreement*, subject to a *Cy Pres Distribution*, the *Claims Administrator* shall distribute said funds as follows:

- (A) If the unclaimed funds totals less than Twenty Thousand Dollars (\$20,000.00), such amount shall be provided to a *cy pres* chosen by the *Court* based upon a joint submission by the *Parties*. The *Parties* shall seek to have the *Court* identify a *cy pres* recipient in the *Final Approval Order*.
- (B) If the unclaimed funds are Twenty Thousand Dollars (\$20,000.00) or more, such amount shall be divided equally amongst those *Partial Settlement Class Members* who cashed their *Settlement Checks* (and therefore did not contribute to the unclaimed funds) after the *Claims Administrator* deducts all necessary fees and expenses for said second disbursement. Such checks shall be identified as "Supplemental Payment" and shall be treated as non-wages with the *Claims Administrator* providing an IRS Form 1099 for such payment. The Supplemental Payment checks will state that "the check must be cashed within ninety days (90) days or it will become void." The *Parties* will notify the *Court* if a distribution is made pursuant to this paragraph. After the void date on the Supplemental Payment checks expires, should there be any unclaimed funds resulting from this second distribution, such amount shall be provided to the *cy pres* recipient set forth in the *Final Approval Order*.
- (C) In seeking entry of the *Final Approval Order*, the *Parties* shall jointly propose three potential *cy pres* recipients from which the *Court* may, if it so chooses, select from. The *Parties* shall use their best efforts to agree upon organizations that provide one or more of the following: (i) legal aid to low-income citizens of the Commonwealth of Pennsylvania, (ii) support to restaurant-industry workers, or (iii) food pantry to low-income Pennsylvanians.

5.15 Fees and Expenses Borne By *Defendant*. In addition to the *Settlement Amount* and any other expenses enumerated in this *Settlement Agreement*, *Defendant* will bear sole responsibility for *Defendant's Counsel's* fees, expenses, and costs associated with this *Action* and any *Appeal*. Further, *Defendant* will bear sole responsibility for all fees and costs associated with dissemination of any notice required by *CAFA*. In addition, *Defendant* will bear sole responsibility for the payment of the employer's portion of payroll taxes regarding the part of the *Settlement Payments* attributable to wages. Further, should this *Settlement* not become *Final* for any reason, *Defendant* will bear all responsibility for any fees or expenses incurred by the *Claims Administrator*. Should this *Settlement* become *Final*, under no circumstances whatsoever shall any portion of the *Settlement Amount* revert to *Defendant*.

5.16 Class Counsel's Attorney's Fees.

- (A) *Plaintiff* and *Defendant* have agreed to submit the issue of the amount of *Settlement Attorney's Fees* due to *Class Counsel* in connection with this *Settlement* to the *Court*.
- (B) *Plaintiff* and *Defendant* agree that prior to seeking entry of the *Final Approval Order*, *Class Counsel* may make an application to the *Court* for an award of all *Attorney's Fees* to which *Class Counsel* believes it is entitled under the FLSA and PMWA, and the resolution of *Class Counsel's* application for *Attorney's Fees* shall proceed in the manner prescribed by the Federal Rules of Civil Procedure, Local Rules of the *Court*, and as otherwise directed by the *Court*. Except as otherwise set forth herein, nothing in this *Settlement* is intended to preclude the *Parties* from introducing evidence or making arguments directed to the appropriateness or reasonableness of any award of *Attorney's Fees* in the *Action*, as is permitted under applicable rules.
- (C) *Plaintiff* and *Defendant* stipulate and agree that thirty-three percent (33%) of the total amount of the *Class Counsel's Attorney's Fees* the *Court* may award pursuant to the FLSA and/or PMWA shall be the amount of *Class Counsel's Settlement Attorney's Fees*. By way of example, and without waiver or stipulation: (1) if the *Court* awards \$1,000,000 as *Class Counsel's Attorney's Fees*, \$333,333.33 shall be the amount of *Class Counsel's Settlement Attorney's Fees*; or (2) if the *Court* awards \$500,000 as *Class Counsel's Attorney's Fees*, \$165,000.00 shall be the amount of *Class Counsel's Settlement Attorney's Fees*.
- (D) *Defendant* expressly waives its entitlement to the credit for attorney's fees paid to *Class Counsel* under Paragraph 11 of the *Prior Partial FLSA Settlement*, and *Defendant* agrees that it shall not seek to reduce the amount of *Class Counsel's Attorney's Fees* awarded by the *Court* based on the *Prior Partial FLSA Settlement*. Rather, *Class Counsel* shall submit all hours they deem appropriate in seeking an award of *Attorney's Fees* and shall reduce their total amount sought by ninety-five thousand dollars (\$95,000), the amount paid by *Defendant* in the *Prior Partial FLSA Settlement*.

- (E) Further, *Defendant* stipulates and agrees that it shall not seek to have any fees reduced based on the assertion that those fees are arguably attributable to only the prosecution or resolution of the 80/20 Claim or the *Prior Partial FLSA Settlement*. In addition, in any *Appeal*, *Defendant* agrees that it shall not seek to have any fees reduced based on the assertion that those fees are arguably attributable to only the prosecution or resolution of the claims released by this *Settlement Agreement*.
- (F) In her application for preliminary approval and final approval of this *Settlement*, *Plaintiff*, through *Class Counsel*, shall ask the *Court* for approval of the stipulation set forth in this Paragraph, and approval for the amount of *Settlement Attorney's Fees* due under this *Settlement* using the calculation set forth in Paragraph 16(C).
- (G) *Plaintiff* and *Defendant* may appeal the *Attorney's Fees' Order* as any other order of the *Court*. Prior to the filing of any appeal from an award of *Class Counsel's Attorney's Fees*, *Defendant* shall pay to *Class Counsel*, via wire transfer, the amount of the *Settlement Attorney's Fees* award attributable to the *Settlement*, and approved by the *Court*, as determined in accordance with Paragraph 5.16(C) and the *Final Approval Order*.
- (H) *Defendant* acknowledges and agrees that the amount it pays in *Class Counsel's Settlement Attorney's Fees* shall not be recoverable in the event the *Attorney's Fees' Order* is reduced or vacated on appeal. *Plaintiff* acknowledges and agrees that the amount paid by *Defendant* pursuant to this paragraph shall be the total amount of *Class Counsel's Settlement Attorney's Fees* due and owing under the *Settlement*, and that *Defendant* shall be entitled to a credit for the amount of *Class Counsel's Settlement Attorney's Fees* paid pursuant to this *Settlement* against any future final judgment awarding *Attorney's Fees* in this *Action*. For example, if *Defendant* pays \$300,000 in *Class Counsel's Settlement Attorney's Fees* pursuant to this *Settlement*, and a final judgment, no longer subject to appeal, is entered awarding *Class Counsel* \$750,000 in *Attorney's Fees*, *Defendant* will be entitled to a credit of \$300,000 against the award of \$750,000 in *Attorney's Fees*, and *Defendant* may satisfy the judgment for *Attorney's Fees* by paying \$450,000.
- (I) The *Parties* stipulate and agree that in any appeal from the *Attorney's Fees' Order*, *Defendant* shall not seek to reduce the total award of *Attorney's Fees* based upon the payment made to *Class Counsel* pursuant to Section 5.16(C).
- (J) Before any payment of any amount designated as *Class Counsel's* fees, *Class Counsel* will provide *Defendant* with all information necessary to effectuate such payments (e.g., a fully executed IRS Form W-9). *Class Counsel* will be issued an IRS Form 1099 for their award of *Class Counsel's* fees in the amount paid by *Defendant*. *Class Counsel* will be solely responsible for how the amount is to be allocated amongst the firms comprising *Class Counsel*, and *Defendant* will have no responsibility whatsoever for this allocation.

- (K) The *Parties* stipulate and agree that *Class Counsel* may seek an award of any fees associated with the *Appeal* or action taken subsequent to the filing of the *Appeal* and that *Class Counsel* may make an application to the *Court* for an award of all fees and costs associated therewith as permitted by applicable law.

5.17 *Attorney's Costs.*

- (A) *Class Counsel* may make an application to the *Court* for an award of *Attorney's Costs* in an amount not to exceed twenty-six thousand dollars (\$26,000.00). Such application will be filed in connection with *Plaintiffs' Final Approval Motion*.
- (B) If the *Court* rules that any amount requested by *Class Counsel* for *Attorney's Costs* is excessive and reduces the same, only the reduced amount will be deemed to be *Attorney's Costs* for purposes of this *Settlement Agreement*.
- (C) The *Parties* stipulate and agree that no portion of the *Attorney's Costs* as awarded by the *Court* shall be appealable by *Defendant* under any circumstances.
- (D) When sending the *Settlement Amount* to the *Claims Administrator*, *Defendant* will also, at the same time, wire transfer the amount representing *Attorney's Costs* to *Class Counsel*. *Class Counsel* will be solely responsible for how the amount is to be allocated amongst themselves, and *Defendant* will have no responsibility whatsoever for this allocation.
- (E) Payment of *Attorney's Costs* as set forth in this *Settlement Agreement* and the *Court's Final Approval Order* will constitute full and final satisfaction of any and all obligations by *Defendant* to pay any person, attorney or law firm (including but not limited to *Class Counsel*) for any expenses or costs incurred on behalf of the *Plaintiffs*, *Rule 23 Class*, *ETCN Rule 23 Subclass*, and the *FLSA Collective* and will relieve the *Released Persons* of any other claims or liability to any person for any expenses and costs to which any person may claim to be entitled on behalf of the *Plaintiffs*, *Rule 23 Class*, *ETCN Rule 23 Subclass*, and the *FLSA Collective* for this *Action*. *Defendant* will have no additional liability to *Class Counsel* for costs, including without limitation, administrative costs, expert fees and costs, or attorneys' costs. The *Parties* stipulate and agree that this Section shall not apply with respect to any costs or expenses associated with the *Appeal*, distribution to the *Rule 23 Class*, and/or costs incurred by *Class Counsel* subsequent to the *Parties'* seeking preliminary approval of this *Settlement Agreement*.

5.18 *Service Payment.*

- (A) *Class Counsel* may also make an application to the *Court* for a one-time *Service Payment* award to *Plaintiff Gower*, in recognition of the work and services this *Plaintiff* contributed to the case including, but not limited to, meetings with *Class Counsel*, assumption of risks, serving as a class representative, and related activities. The *Service Payment* will not exceed two thousand five hundred dollars

(\$2,500.00). The final amount of the *Service Payment*, if any, will be determined by the *Court*.

- (B) The *Claims Administrator* will make the *Service Payment* in the amount approved by the *Court* within the same time period for distributing *Settlement Payments*.
- (C) The *Service Payment* will be treated as non-wage income, and the *Claims Administrator* will issue a Form 1099 to *Plaintiff Gower* reflecting the value of the payment.

6. **RELEASE OF CLAIMS; ASSIGNMENT**

6.1 **Release of Claims.**

- (A) Effective as of the *Final Effective Date*, the *Partial Settlement Class Members* will be deemed to forever and fully release and discharge *Defendant*, and release and hold harmless the *Released Persons*, as follows (for each individual *Partial Settlement Class Member*, their individual “*Released Claims*”):
 - (1) *ETCN Rule 23 Subclass* members release *Released Persons* from any PMWA claim relating to their employment with *Defendant* from January 22, 2016 through August 1, 2019 for failure to pay minimum wage that were alleged or that could have been alleged in the *Complaint*, asserted in the *Action*, by reason of the negotiations leading to this *Settlement*, or effectuation of this *Settlement*, and any claims, counterclaims, crossclaims, complaints, charges, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, and obligations, including attorneys' fees, expenses and costs arising from the negotiation or consummation of this *Settlement Agreement* that accrued on or before the date of *Final Approval*, even if presently unknown or un-asserted.
 - (2) *FLSA Collective* members release *Released Persons* from any FLSA claim relating to their employment with *Defendant* during their *FLSA Collective Period* for failure to pay minimum wage that were alleged or that could have been alleged in the *Complaint*, asserted in the *Action*, by reason of the negotiations leading to this *Settlement*, or effectuation of this *Settlement*, and any claims, counterclaims, crossclaims, complaints, charges, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, and obligations, including attorneys' fees, expenses and costs arising from the negotiation or consummation of this *Settlement Agreement* that accrued on or before the date of *Final Approval*, even if presently unknown or un-asserted.
- (B) *Partial Settlement Members*, to the fullest extent allowed by law, are prohibited from asserting any claims released by them in this *Settlement*, and from

commencing, joining in or prosecuting a lawsuit or adversarial proceeding against the *Released Persons*, based on claims released by them in this Settlement.

- (C) The *Parties* acknowledge and agree that the releases and covenants set forth in Section 6.1 are only coextensive with the monetary relief provided. Thus, for example, if an individual is only a member of the *FLSA Collective*, their release and covenants only apply to their FLSA claims. The *Parties* also stipulate and agree that Section 5.8(B)(3) of this *Settlement Agreement* shall have no relevance in determining whether the release in Section 6.1(A)(1) or (A)(2) is applicable to a particular *Partial Settlement Class Member*.
- (D) The *Parties* further acknowledge and agree that nothing in this *Settlement Agreement* shall be construed to foreclose a member of the *FLSA Collective* from recovering for hours worked outside of the *FLSA Collective Class Period* as a member of the *Rule 23 Class*. Under no circumstances shall a *Partial Settlement Class Member* be entitled to recover for hours worked during the *Class Period*, and which were used in calculating their *Settlement Payment*.

6.2 All members of the *ETCN Rule 23 Subclass* and the *FLSA Collective* will be bound by the terms and conditions of this *Settlement Agreement*, the *Final Approval Order*, the judgment, and the releases set forth herein.

- (A) Any putative *Partial Settlement Class Member* who submits a timely and valid *Request for Exclusion* will not on behalf of themselves or the *ETCN Rule 23 Subclass* (i) be bound by any orders or judgments entered into this *Action* regarding the *ETCN Rule 23 Subclass*; (ii) be entitled to any benefits or relief provided or conferred to the *ETCN Rule 23 Subclass* under this *Settlement Agreement*; (iii) gain any rights provided or conferred to the *ETCN Rule 23 Subclass* by virtue of this *Settlement Agreement*; or (iv) be entitled to object to the *Settlement* or appeal any order of this *Court* as they pertain to the *ETCN Rule 23 Subclass*.
- (B) Any putative *Partial Settlement Class Member* who elects to withdraw their previously filed *Consent to Sue* form will not on behalf of themselves or the *FLSA Collective* (i) be bound by any orders or judgments entered into this *Action* regarding the *FLSA Collective*; (ii) be entitled to any benefits or relief provided or conferred to the *FLSA Collective* under this *Settlement Agreement*; (iii) gain any rights provided or conferred to the *FLSA Collective* by virtue of this *Settlement Agreement*; or (iv) be entitled to object to the *Settlement* or appeal any order of this *Court* as they pertain to the *FLSA Collective*.

6.3 ***Defendant's Releases.*** Without in any way infringing on the rights and obligations set forth in the *Prior Partial Settlement Agreement*, upon the *Final Effective Date*, *Defendant* will conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge *Plaintiff Gower* and *Partial Settlement Class Members* from any and all claims, counterclaims, crossclaims, complaints, charges, demands, actions, causes of action, judgments, debts, expenses, losses, liabilities, and obligations,

including attorneys' fees, expenses and costs, arising from the negotiation or consummation of this *Settlement Agreement* that accrued on or before the date of *Final Approval*.

- 6.4 **Scope of Releases.** The release and discharge set forth in Section 6 will not include the release or discharge of any rights or duties of the *Parties* arising out of this *Settlement Agreement*, including the express warranties and covenants contained herein. Further, the *Parties* expressly acknowledge and agree that the releases and discharges set forth in Section 6 will have no effect on either *Wintjen* and/or the *Rule 23 Class*.
- 6.5 **No Assignment.** *Plaintiffs* and *Defendant* represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any part thereof or interest therein, including, but not limited to, any interest in the *Action*, or any related action.
- 6.6 **Releasing Parties.** *Plaintiff Gower*, *Defendant*, and any *Partial Settlement Class Members* who are bound by any of the releases set forth in this Section shall be referred to as the "Releasing Parties."

7. **NON-ADMISSION OF LIABILITY.**

- 7.1 By entering into this *Settlement Agreement*, *Defendant* in no way admits any violation of law or any liability whatsoever.
- 7.2 Likewise, by entering into this *Settlement Agreement*, *Defendant* in no way admits to the suitability of this case for class or collective action litigation other than for purposes of settlement. Settlement of the *Actions*, negotiation and execution of this *Settlement Agreement*, and all acts performed or documents executed pursuant to or in furtherance of this *Settlement Agreement* or the *Settlement* (a) are not evidence of any wrongdoing or liability on the part of *Defendant* or of the truth of any of the factual allegations in the *Complaint*; (b) are not an admission or evidence of fault or omission on the part of *Defendant* in any civil, criminal, administrative or arbitral proceeding; and (c) are not an admission or evidence of the appropriateness of these or similar claims for class certification or administration or collective action treatment other than for purposes of administering this *Settlement Agreement*.

8. **TERMINATION.**

- 8.1 **Grounds for Settlement Agreement Termination.** Any *Party* may terminate the *Settlement Agreement* if the *Court* declines to enter the *Final Approval Order* or judgment substantially in the form submitted by the *Parties*, or if a Court of Appeals reverses the entry of a *Final Approval Order* or judgment. Additionally, the following events are also grounds for termination:
 - (A) *Plaintiffs* may terminate this *Settlement Agreement* should *Defendant* file for bankruptcy prior to the *Final Effective Date*.

- (B) In the event that *Defendant* declares bankruptcy prior to disbursement of the *Settlement Amount* and any bankruptcy trustee seizes any portion of the *Settlement Amount*, any releases granted by the *Releasing Parties* shall be void irrespective of whether *Plaintiffs* have exercised their right to terminate.
- (C) *Defendant* may terminate this *Settlement Agreement* if more than ten percent (10%) of the *ETCN Rule 23 Subclass* opt-out of this *Settlement* by filing timely *Requests for Exclusion*.
- (D) Either *Party* may terminate this *Settlement Agreement* if the *Court* enters final judgment on the *Rule 23 Class* claims, or any order regarding the *Attorney's Fees*, prior to entering the *Final Approval Order*.

8.2 Procedures for Termination. To terminate this *Settlement Agreement* as specified above, the terminating *Party* will give written notice to the other *Party* no later than fourteen (14) calendar days after the terminating *Party* learns that the applicable ground for termination has been satisfied.

8.3 Effect of Termination.

- (A) Should this *Settlement Agreement* be terminated pursuant to Section 8, this *Settlement Agreement* will not be offered, received, or construed as an admission of any kind as to liability, damages, whether any class or collective is certifiable, or in any other matter by any *Party*. Neither the *Settlement Agreement*, any motions filed, settlement proposals exchanged by the *Parties*, nor Orders entered pursuant to the *Settlement Agreement*, will constitute an admission, finding or evidence that any requirement for representative litigation or certification as a class or collective action has been satisfied in this *Action* or any other action, except for the limited settlement purposes pursuant to the terms of the *Settlement Agreement*. Further, should this *Settlement Agreement* be terminated pursuant to Section 8, the *Parties* shall work cooperatively to obtain a new trial date.
- (B) If this *Settlement Agreement* is canceled, rescinded, terminated, voided, or nullified, or the settlement of the *Action* is barred by operation of law, is invalidated, is not approved or otherwise is ordered not to be carried out by any *Court*:
 - (1) the *Settlement Agreement* will have no force or effect, and no *Party* will be bound by any of its terms with respect to the terminating *Parties*;
 - (2) *Defendant* will have no obligation to make any payments to *Plaintiffs*, any *Rule 23 Class*, *ETCN Rule 23 Subclass*, or *FLSA Collective* member, or *Class Counsel*, except that *Defendant* will be responsible for paying the *Claims Administrator* for services rendered up to the date the *Claims Administrator* is notified that the *Settlement* has been terminated; and

- (3) the *Parties* will jointly, and promptly, seek a new trial date from the *Court*.
- (4) this *Settlement Agreement*, and any portion thereof, shall not be used by any of the *Parties* in presenting any argument to the *Court*.

9. MISCELLANEOUS.

9.1 *Parties' Authority*

- (A) The signatories hereby represent that they are fully authorized to enter into this *Settlement Agreement* and bind the *Parties* hereto to the terms and conditions hereof.
- (B) The entity or individual signing this *Settlement Agreement* on behalf of *Defendant* represents and warrants that they have authority to sign on behalf of *Defendant* and, accordingly bind *Defendant* to this *Settlement Agreement*.
- (C) The *Class Notice* will advise all putative *Partial Settlement Class Members* of the binding nature of the release, and that the release will have the same force and effect upon each *Partial Settlement Class Member* as if the *Settlement Agreement* were executed by each *Partial Settlement Class Member*.

9.2 *Advice of Counsel.* In entering into this *Settlement Agreement*, each *Party* represents and warrants that it has relied upon the advice of its attorneys, that it has completely read the terms of this *Settlement Agreement*, and that the terms of this *Settlement* have been explained to it by its attorneys. Each *Party* further represents and warrants that it fully understands and voluntarily accepts the terms of the *Settlement*.

9.3 *Admissibility.* This *Settlement Agreement* will be inadmissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this *Settlement Agreement*.

9.4 *Severability.* If any court with original or appellate jurisdiction over this *Action* issues a *Final* determination that any part of this *Settlement Agreement* is not enforceable, the *Parties* may (but will not be required to) jointly agree in writing to modify this *Settlement Agreement* to conform with such determination.

9.5 *Notices.* Any notice, demand or other communication under this *Settlement Agreement* (other than the *Class Notice* or other notices given at the direction of the *Court*) will be in writing and will be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid) or delivered by reputable express overnight courier, with a copy by email.

IF TO *PLAINTIFFS* OR THE *PARTIAL SETTLEMENT CLASS MEMBERS*:

CONNOLLY WELLS & GRAY, LLP
Gerald D. Wells, III
Email: gwells@cwglaw.com
101 Lindenwood Drive, Suite 225
Malvern, PA 19355
Telephone: (610) 822-3702

IF TO *DEFENDANT*:

FARUKI PLL
Darren Ford
Email: dford@fclaw.com
201 East Fifth Street, Suite 1420
Cincinnati, OH 45402
Telephone: 513-632-0313

- 9.6 Cooperation between the *Parties*; Further Acts.** The *Parties* will cooperate fully with each other and will use their best efforts to obtain the *Court's* approval of this *Settlement Agreement* and all of its terms. Each of the *Parties*, upon the request of any other party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this *Settlement Agreement*.
- 9.7 Entire Agreement.** This *Settlement Agreement* constitutes the entire agreement between the *Parties* with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the *Parties* will be deemed merged into this *Settlement Agreement*.
- 9.8 Binding Effect.** This *Settlement Agreement* will be binding upon the *Parties* and, with respect to *Partial Settlement Class Members*, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys and assigns.
- 9.9 Arm's Length Transaction; Materiality of Terms.** The *Parties* have negotiated all the terms and conditions of this *Settlement Agreement* at arm's length. All terms and conditions of this *Settlement Agreement* in the exact form set forth in this *Settlement Agreement* are material to this *Settlement Agreement* and have been relied upon by the *Parties* in entering into this *Settlement Agreement*.
- 9.10 Captions.** The captions or headings of the sections and paragraphs of this *Settlement Agreement* have been inserted for convenience of reference only and will have no effect upon the construction or interpretation of any part of this *Settlement Agreement*.
- 9.11 Construction.** The determination of the terms and conditions of this *Settlement Agreement* has been by mutual agreement of the *Parties*. Each party participated jointly in the drafting of this *Settlement Agreement*, and therefore the terms and conditions of this *Settlement*

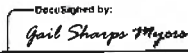
Agreement are not intended to be, and will not be, construed against any party by virtue of draftsmanship.

- 9.12 Governing Law.** This *Settlement Agreement* will in all respects be interpreted, enforced and governed by and under the laws of the Commonwealth of Pennsylvania, without regard to choice of law principles, except to the extent that the law of the United States governs any matter set forth herein, in which case such federal law will govern.
- 9.13 Continuing Jurisdiction.** The *Court* will retain jurisdiction over the interpretation and implementation of this *Settlement Agreement* as well as any and all matters arising out of, or related to, the interpretation or implementation of this *Settlement Agreement* and of the settlement contemplated thereby. The *Court* will not have jurisdiction to modify the material terms of the *Settlement Agreement* or to increase *Defendant's* payment obligations hereunder without the *Parties'* agreement.
- 9.14 Waivers, Modifications, Amendments to be in Writing.** No waiver, modification or amendment of the terms of this *Settlement Agreement*, whether purportedly made before or after the *Court's* approval of this *Settlement Agreement*, will be valid or binding unless in writing, signed by or on behalf of all *Parties* and then only to the extent set forth in such written waiver, modification or amendment, subject to any required *Court* approval. Any failure by any *Party* to insist upon the strict performance by the other party of any of the provisions of this *Settlement Agreement* will not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this *Settlement Agreement*, and such party, notwithstanding such failure, will have the right thereafter to insist upon the specific performance of any and all of the provisions of this *Settlement Agreement*.
- 9.15 When Agreement Becomes Effective; Counterparts.** This *Settlement Agreement* will become effective upon its execution. The *Parties* may execute this *Settlement Agreement* in counterparts, and execution in counterparts will have the same force and effect as if *Plaintiffs* and *Defendant* had signed the same instrument.

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DATED: June 5, 2024

FOR DEFENDANT

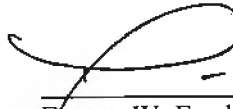

By: 
DocuSigned by:
Gail Sharps Myers
E86326A7-127D5424

Printed Name: Gail Sharps Myers

Title: Chief Legal Officer & Sec

APPROVED AS TO FORM BY
DEFENDANT'S COUNSEL:

DATED: June 5, 2024

Darren W. Ford
FARUKI PLL

DATED: _____

Plaintiff Juli Wintjen

DATED: _____

Plaintiff Sarah Gower

APPROVED AS TO FORM BY PLAINTIFF'S
COUNSEL:

DATED: _____

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

DATED: _____

FOR DEFENDANT

By: _____

Printed Name: _____

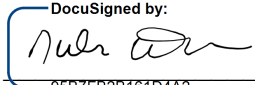
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APPROVED AS TO FORM BY
DEFENDANT'S COUNSEL:

DATED: _____

Darren W. Ford
FARUKI PLL

DATED: 6/3/2024 _____

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Plaintiff Juli Wintjen

DATED: _____

Plaintiff Sarah Gower

APPROVED AS TO FORM BY PLAINTIFF'S
COUNSEL:

DATED: _____

Gerald D. Wells, III
CONNOLLY WELLS & GRAY LLP

such written waiver, modification or amendment, subject to any required *Court* approval. Any failure by any *Party* to insist upon the strict performance by the other party of any of the provisions of this *Settlement Agreement* will not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this *Settlement Agreement*, and such party, notwithstanding such failure, will have the right thereafter to insist upon the specific performance of any and all of the provisions of this *Settlement Agreement*.

- 9.15 When Agreement Becomes Effective; Counterparts.** This *Settlement Agreement* will become effective upon its execution. The *Parties* may execute this *Settlement Agreement* in counterparts, and execution in counterparts will have the same force and effect as if *Plaintiffs* and *Defendant* had signed the same instrument.

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DATED: _____

FOR DEFENDANT

By: _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM BY
DEFENDANT'S COUNSEL:


DATED: _____

Darren W. Ford
FARUKI PLL

DATED: _____

Plaintiff Juli Wintjen

DATED: 5-30-24


Plaintiff Sarah Gower

APPROVED AS TO FORM BY PLAINTIFF'S

DATED: _____

FOR DEFENDANT

By: _____

Printed Name: _____

Title: _____

APPROVED AS TO FORM BY
DEFENDANT'S COUNSEL:

DATED: _____

Darren W. Ford
FARUKI PLL

DATED: _____


Plaintiff Juli Wintjen

DATED: _____

Plaintiff Sarah Gower

APPROVED AS TO FORM BY PLAINTIFF'S
COUNSEL:

DATED: June 4, 2024



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