

**EXECUTION COPY****FLSA COLLECTIVE ACTION SETTLEMENT AGREEMENT**

This Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement") is entered into between Plaintiff Juli Wintjen ("Plaintiff"), individually and on behalf of the Settlement Collective defined below, and Defendant Denny's Inc. ("Defendant" or "Denny's"), subject to the approval of the Court. Plaintiff and Defendant are referred to individually as a "Party" and together as the "Parties."

**RECITALS AND BACKGROUND**

WHEREAS, on January 22, 2019, Plaintiff Juli Wintjen filed her complaint against Denny's asserting claims under both the Fair Labor Standards Act ("FLSA") and the Pennsylvania Minimum Wage Act ("PMWA"). Plaintiff 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").

WHEREAS, Plaintiff sought conditional certification of a collective action under 29 U.S.C. § 216(b) for both her FLSA Notice Claim and her FLSA 80/20 Claim, and Fed. R. Civ. P. 23 ("Rule 23") class certification for her PMWA Notice Claim. She did not seek Rule 23 class certification for her PMWA 80/20 Claim.

WHEREAS, On November 18, 2021, the court conditionally certified a collective action for both FLSA claims and directed that notice of the action be given to former servers employed by Denny's in the Commonwealth of Pennsylvania between July 6, 2017 and August 1, 2019, and that were hired prior to January 1, 2019. The court also granted class certification for Plaintiff's PMWA Notice Claim and directed that notice of the class be given to all servers employed by Denny's in the Commonwealth of Pennsylvania between January 22, 2016 and August 1, 2019, and that were hired prior to January 1, 2019.

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 form consenting to join the collective action ("Consent Form"). One additional Consent Form 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, on May 18, 2022, Denny's filed a motion to exclude 43 former servers who had filed Consent Forms on the ground that their claims were time-barred. The Court granted that motion in part and excluded 19 former servers from the collective.

WHEREAS, at present, the collective consists of 97 former servers who either filed a Consent Form on or prior to March 18, 2022, or were granted leave to file a Consent Form by the Court. The parties presently dispute whether Ashley Coulter, who filed her Consent Form after the March 18, 2022 deadline, but was not granted leave by the Court to do so, is part of the

collective. For settlement purposes only, she is included in the Settlement Collective (as defined below).

WHEREAS, the Parties, after substantial arm's-length settlement negotiations, wish to resolve the 80/20 Claims (as defined below), acknowledging that the resolution of this claim will not fully resolve the Litigation (as defined below).

WHEREAS, Plaintiff's Counsel has made a thorough and independent investigation of the facts and law relating to the allegations in the Litigation. In agreeing to this Settlement Agreement, Plaintiff has considered: (a) the facts developed during discovery and the law applicable thereto; (b) the risks of continued litigation; and (c) the desirability of consummating this Settlement according to the terms of this Settlement Agreement. Plaintiff has concluded that the terms of this Settlement Agreement are fair and reasonable, and that it is in the best interests of Plaintiff and the Settlement Collective to settle their 80/20 Claims against Defendant and the Released Parties (as defined below) as set forth herein.

WHEREAS, Denny's denies any liability or wrongdoing of any kind associated with any and all claims alleged in the Litigation, and, for any purpose other than settling the 80/20 Claims, further denies that this action is appropriate for collective or class action treatment. Denny's contends, among other things, that it complied at all times with all applicable state and federal laws. Denny's is entering this Agreement to eliminate the burden, risk, and expense of further litigation of the 80/20 Claims. 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.

WHEREAS, The Parties stipulate and agree that, for settlement purposes only, the requirements for establishing final certification of a collective action under the FLSA pursuant to 29 U.S.C. § 216(b) are met with respect to the Settlement Collective (as defined below) solely for purposes of the FLSA 80/20 Claim. Should this Settlement not be approved, such stipulation to final certification shall become null and void and shall have no bearing on (or be admissible in connection with) the issue of whether certification would be appropriate in a non-settlement context.

WHEREAS, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows.

### **DEFINITIONS**

The following terms used in this Agreement have the following meanings:

A. **"80/20 Claims"** means the claims asserted by Plaintiff, on behalf of herself and the Settlement Collective, that Denny's failed to pay Plaintiff and the Settlement Collective minimum wage for hours spent performing non-tipped duties and/or excessive "side work" duties in violation of the FLSA and PMWA as alleged in Paragraphs 7, 14, 15, 27, 30, 37, 39, 40, 64, 65, 66, 67, 68, 69, 84, 85, 86, 92, 93, 94 of Plaintiff's Complaint filed in the Litigation (ECF No. 1).

B. **"Administration Costs"** means any and all fees and costs paid or incurred for the administration of the Settlement, including but not limited to, the Settlement

Administrator's fees and expenses relating to preparing reports to counsel for the Parties, preparing and mailing distributions from the Gross Settlement Amount, preparing all necessary tax documents, and/or distribution of the Settlement as set forth herein; and all other fees, costs, and/or expenses reasonably invoices by the Settlement Administrator. All Administration Costs of the Settlement Administrator shall be paid from the Gross Settlement Amount and under no circumstances shall Denny's be required to pay more than the Gross Settlement Amount or be required to pay or contribute more to cover Administration Costs. Subject to Court approval and pursuant to agreement with the Settlement Administrator, the Administration Costs shall not exceed ten thousand and 00/100 dollars (\$10,000).

C. **"Appeal Period"** refers to a period of thirty (30) calendar days after the entry of the Approval Order.

D. **"Approval Order"** means the order approving the terms and conditions of this Settlement Agreement, as may be modified by the Court.

E. **"Complaint"** means the complaint filed in the Litigation (ECF No. 1).

F. **"Court"** means the United States District Court for the Western District of Pennsylvania.

G. **"Collective Period"** means for the Named Plaintiff the time period from January 22, 2016 to August 1, 2019 and for all other Settlement Collective Members the time period between July 6, 2017 and August 1, 2019.

H. **"Cover Letter"** means the letter, subject to Court approval, sent to Settlement Collective Members with their Settlement Check explaining the general provisions of this Settlement, including how to withdraw from the collective action, substantially in the form as set forth in **Exhibit A**. The Cover Letter shall be mailed to Settlement Collective Members within the time period specified in Paragraph 14.

I. **"Defendant's Counsel" or "Denny's' Counsel"** means Darren Ford of Faruki PLL, and Kent Wellington, Michael Roberts, and Kellie Kulka of Graydon Head & Ritchey LLP.

J. **"Denny's" or "Defendant"** means Defendant in the Litigation and its present and former parent companies, subsidiaries, and affiliates employing Settlement Collective Members in Pennsylvania.

K. **"Effective Date"** means the date defined in Paragraph 14 below.

L. **"Employer Payroll Taxes"** means Denny's' share of any taxes that it is required to pay arising out of the payment of any monies to Settlement Collective Members as part of this Settlement, including FICA, FUTA, and SUTA obligations.

M. **"Gross Settlement Amount"** means the maximum total gross amount that Denny's agrees to pay to fully resolve and settle the 80/20 Claims in this Litigation, and will cover all monies due and payable for the Settlement. The Gross Settlement Amount includes all Administration Costs, Plaintiff's Counsel's Fees and Expenses, Service Awards, and Employer Payroll Taxes.

N. "**Litigation**" or the "**Lawsuit**" means *Wintjen, et al. v. Denny's, Inc., et al.*, No. 2:19-cv-00069-CCW (W.D. Pa.).

O. "**Named Plaintiff**" means Juli Wintjen.

P. "**Parties**" means the Named Plaintiff and Defendant.

Q. "**Plaintiff's Counsel Fees and Expenses**" means the total amount of Plaintiff's Counsel's attorney's fees and out-of-pocket expenses approved by the Court in its Approval Order.

R. "**Plaintiff's Counsel**" means Gerald D. Wells, III and Robert J. Gray of Connolly Wells & Gray, LLP, and Edwin J. Kilpela and Elizabeth Pollock Avery of Lynch Carpenter, LLP.

S. "**Released Parties**" means 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, including any party that was or could have been named as a defendant in the Litigation.

T. "**Schedule of Payments**" means the document attached to the Agreement as **Exhibit B** identifying, *inter alia*, each Settlement Collective Member; the amount received by each Settlement Collective Member under the Settlement Agreement; the date the Settlement Collective Member filed their Consent Form with the Court; the total number of hours worked under a subminimum wage code during the three years preceding the date the Settlement Collective Member filed their Consent Form; and the total number of hours worked under subminimum wage job code at Denny's.

U. "**Service Awards**" means the amounts due to Named Plaintiff and certain representative opt-ins as identified in **Exhibit C** under Paragraph 10 of this Agreement.

V. "**Settlement Administrator**" means RG/2 Claims Administration, LLC, subject to the approval of the Court, which shall effectuate the Settlement by distributing payments and performing all other tasks specified in this Agreement and/or ordered by the Court.

W. "**Settlement Check**" means the check issued to each Settlement Collective Member for the amount of their individual settlement payment, as identified in **Exhibits B and C**, in accordance with the terms of this Agreement.

X. "**Settlement Collective**" or "**Settlement Collective Members**" means the individuals identified in **Exhibit B**.

## SETTLEMENT

1. **Payments for Alleged Wage Damages.** Defendant agrees to pay the total gross sum of Forty-Three Thousand Three Hundred Forty-One Dollars and 61/100 (\$43,341.61) to the Settlement Collective in alleged wage damages, which shall be paid to each Settlement Collective Member in accordance with the Schedule of Payments attached as **Exhibit B**. In the event that a Settlement Collective Member timely withdraws their Consent Form in accordance with Paragraph 17 of this Agreement, the withdrawing individual's payment shall be treated as unclaimed funds in accordance with Paragraph 18 of the Agreement.

2. **Calculation of Alleged Wage Damages.** Plaintiff's Counsel has obtained electronic payroll and time data from Denny's in the course of this Litigation. Using this data, Plaintiff's Counsel conducted an individualized analysis of each Settlement Collective Members' potential damages for their respective 80/20 Claim, using a three-year look-back, from the date the Settlement Collective Member filed their Consent Form in the Litigation. The Settlement Administrator will confirm these calculations as part of its duties. The amounts paid as wage damages under Paragraph 1 of this Agreement are calculated as follows:

A. One Hundred Dollars and 00/100 (\$100) for each Settlement Collective Member irrespective of the number of hours worked during the Collective Period. This amount shall be treated as non-wages for tax purposes;

B. Twenty-five percent (25%) of the total hours worked by the individual under the "Server – 05" subminimum wage job code within the three-year look back, multiplied by the difference between the subminimum wage paid and the federal minimum wage of \$7.25 per hour. This amount shall be treated as 50% wages, subject to applicable withholdings, and 50% liquidated damages, penalties, and interest which shall be treated as a 1099 payment from which no taxes will be withheld.

The Parties agree that, to the extent feasible, the Settlement Administrator shall issue one (1) Settlement Check for all monies owed under this Settlement Agreement to each Settlement Collective Member owed any such funds. Plaintiff, on behalf of herself and the Settlement Collective, acknowledges and agrees that by accepting the Settlement Checks, they have been paid all monies (including overtime compensation) owed for the hours indicated in the Schedule of Payments under column "G" for the period July 6, 2017 through August 1, 2019 ("Compensated Hours"), and that Defendant does not owe her, or the Settlement Collective Members, any other monies with regard to the Compensated Hours regarding their 80/20 Claim. Plaintiff specifically agrees that the above payment represents full compensation for her individual PMWA 80/20 Claim, and that her PMWA 80/20 Claim is now moot. Defendant specifically agrees that the payment of these monies shall have no effect whatsoever on the Notice Claim except as set forth below.

Further, in the event there is a judgment, settlement, or award involving all or part of the Settlement Collective Members' Notice Claim, the Parties stipulate and agree that any damage calculation for said individuals will not include any hours for which an individual received remuneration under this Settlement Agreement. For example, and for the avoidance of doubt, if a Settlement Collective Member becomes entitled to receive back wages for their Notice Claim for 1000 hours worked between July 6, 2017 and August 1, 2019, and the number



of hours for which they received compensation under this Agreement per column G in the Schedule of Payments was 250, they would be entitled to recover back wages and liquidated damages for 750 hours worked during that time period.

Neither the Plaintiff, Plaintiff's Counsel, Defendant, nor Defendant's Counsel will have responsibility for, or liability arising from, the calculations of the distribution set forth in the Schedule of Payments including, without limitation, the calculation of an individual Settlement Collective Member's Settlement Check.

3. **Administration Costs.** Denny's shall be responsible for payment of the Administration Costs of the Settlement Administrator, which amount is included in the Gross Settlement Amount.

4. **No Other Payments or Benefits.** Except as set forth in Paragraph 1 of this Agreement, Plaintiff and Settlement Collective Members are not entitled to any other payments, compensation, wages, benefits, reimbursements or distributions from Defendant or any Released Parties (as defined in this Agreement) under this Agreement, under any prior agreement, express or implied, written or unwritten, or otherwise. Notwithstanding the foregoing, Defendant specifically acknowledges and agrees that the payment of these monies shall have no effect whatsoever on the Notice Claim except as set forth in Paragraph 2.

5. **No Admissions of Liability and Non-Admissibility.** By entering into this Agreement, Defendant does not admit, and specifically denies, any liability or wrongdoing. Plaintiff expressly understands and agrees that Defendant expressly denies that it violated the FLSA, and that Defendant is entering into this Agreement solely for the purposes of avoiding costs of litigation associated with the 80/20 Claims. Accordingly, this Agreement does not constitute an admission by Defendant or by any Released Party of any violation of any federal, state or local statute. Further, this Agreement does not constitute an admission by Defendant or by any Released Party of any violation of any contract or common law or any other legal duty. Neither this Agreement nor anything in this Agreement shall be construed to be admissible, or shall be admissible, in any proceeding as evidence of wrongdoing by Defendant or any Released Party.

6. **Protected Rights.** Nothing contained in this Agreement limits the Plaintiff's or any individual in the Settlement Collective's ability to file a charge or complaint with the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), the Occupational Safety and Health Administration (OSHA), the Securities and Exchange Commission (SEC), the Department of Labor (DOL), or any other federal, state, or local governmental agency or commission ("Government Agencies). Plaintiff and all Settlement Collective Members further understands that this Agreement does not limit their ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any government agency, including providing documents or other information, without notice to Denny's. This Agreement does not limit Plaintiff's or any individual in the Settlement Collective's right to receive an award for information provided to any Government Agencies.

7. **Defend Trade Secrets Act.** Named Plaintiff and members of the Settlement Collective are advised that pursuant to the Defend Trade Secrets Act an individual will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a

trade secret, as referenced in the Denny's' "Employee Guidebook" in use during the Collective Period, that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Denny's stipulates and agrees that, as of the date of this Settlement Agreement, it is not aware of any violation of the Trade Secrets Act by any member of the Settlement Collective.

8. **Tax Treatment of Settlement Checks.** The Settlement Checks issued to Settlement Collective Members will be treated as owed wages with the exception of the liquidated damages payment outlined in Section 2.B above. The owed wages shall be made net of the federal and state income taxes, and specified withholding amounts, as determined by the Settlement Administrator, and shall be reported as earned in the year of payment to the Internal Revenue Service ("IRS") and the payee under the payee's name and Social Security Number on an IRS Form W-2. Defendant will be responsible for payment of all payment of the Employer Payroll Taxes with respect to the amounts treated as wages pursuant to this Settlement Agreement.

Plaintiff's Counsel and Defendant's Counsel do not intend for this Settlement Agreement to constitute legal advice relating to the tax liability of any Settlement Collective Member. To the extent that this Settlement Agreement, or any of its attachments, is interpreted to contain or constitute advice regarding any federal, state or local tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any tax liability or penalties.

### **ATTORNEY'S FEES, EXPENSES, AND SERVICE AWARDS**

9. **Plaintiff's Counsel's Attorneys' Fees and Expenses.** Subject to the Court's approval, Denny's agrees to pay Plaintiff's Counsel Ninety-Five Thousand Dollars and 00/100 (\$95,000) in attorney's fees, and Twenty-Four Thousand Two Hundred Forty-Three Dollars and 90/100 (\$24,243.90) in expenses ("Plaintiff Counsel's Fees and Expenses"). The Parties agree that the portion of the settlement attributable to the Attorney's Fees and Expenses was negotiated separately from and without regard to the amounts Plaintiff sought for compensation under the FLSA. An IRS Form 1099-MISC shall be issued to Plaintiffs' Counsel by the Settlement Administrator, and Plaintiff's Counsel shall be solely and legally responsible for paying any and all applicable taxes on the payments made to them.

10. **Service Awards.**

A. **Named Plaintiff:** Subject to the Court's approval, Named Plaintiff shall receive a service award in the amount of Two Thousand Five Hundred Dollars and 00/100 (\$2,500) in recognition of her efforts on behalf of the Settlement Collective Members. An IRS Form 1099-MISC shall be issued to Named Plaintiff by the Settlement Administrator, and Named Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on this payment.

B. **Representative Opt-Ins:** Subject to the Court's approval, the Settlement Collective Members identified in **Exhibit C** ("Representative Opt-Ins") shall each receive a

service award in the amount of One Hundred Dollars and 00/100 (\$100), totaling One Thousand Five Hundred Dollars and 00/100 (\$1,500), in recognition of their efforts in responding to discovery requests on behalf of the Settlement Collective. An IRS Form 1099-MISC shall be issued to the Representative Opt-Ins by the Settlement Administrator, and they shall be solely and legally responsible for paying any and all applicable taxes on this payment.

11. Credit Against Future Attorney's Fees Award. Plaintiff on behalf of herself, the Settlement Collective, and Plaintiff's Counsel, agrees that Denny's shall be entitled to a credit for the payments made in Paragraph 9 against any future awards to Plaintiff and/or Settlement Collective Members in this Litigation as follows:

A. Attorney's Fees. In the event of a future award of attorney's fees in this Litigation, and in consideration for the payment made under Paragraph 9 of this Agreement, Denny's shall be entitled to a reduction of any such future award in the amount of 10% of the total fees awarded (exclusive of expenses, costs, or service awards). For example, in the future, if the Court were to award Plaintiff's Counsel attorney's fees in the amount of \$1,000,000 in this Litigation, and that award were no longer subject to appeal, Denny's would be entitled to a reduction of \$100,000.

B. Expenses. Plaintiff represents and agrees that \$24,243.90 is the total amount of all of her attorneys' out-of-pocket expenses through May 1, 2023, and that neither she nor her attorneys shall be entitled to recover for any expenses incurred in this Litigation prior to that date in any future application for expenses.

C. No Waiver or Admission. The provisions contained in this Paragraph shall not constitute a waiver or otherwise prejudice Denny's' right to appeal any future awards made by this Court in the Litigation, including, but not limited to, attorney's fees, expenses, or plaintiff service awards. Further, nothing in this Agreement should be construed as an admission by Denny's that the awards under this Agreement are appropriate or reasonable, or that any future awards in this Litigation would be appropriate or reasonable. Notwithstanding the foregoing, Denny's acknowledges and agrees that it will not oppose Plaintiff's request for the award of fees, expenses, or Service Awards due pursuant to this Settlement Agreement.

### **COLLECTIVE ACTION SETTLEMENT PROCEDURES**

#### **12. Motion for Bifurcation and Collective Certification.**

A. Solely for purposes of implementing this Agreement and effectuating the proposed partial settlement, the Parties agree and stipulate that the Parties shall jointly move to bifurcate the 80/20 Claims from the Notice Claims, and that for settlement purposes only, the FLSA portion of the 80/20 Claims shall be finally certified as a collective action pursuant to 29 U.S.C. § 216(b), with the members of the collective consisting of the individuals identified in **Exhibit B** to this Agreement.

B. In the event the Settlement Agreement is terminated for any reason, the certification shall be vacated, the Litigation shall proceed as if the collective for the FLSA 80/20 claims had not been finally certified, and the Parties will be restored to their respective places in the Litigation as of the date of this Agreement, except that the 80/20 Claims shall remain bifurcated. Denny's' conditional consent to final certification of a collective action for the FLSA



80/20 Claims shall not be used against Denny's by any Party or non-party for any purposes in this Litigation or any other litigation, lawsuit, or proceeding of any kind whatsoever.

### 13. Settlement Approval.

A. In addition to the motion required by Paragraph 12 of this Agreement, on or before June 2, 2023, Named Plaintiff shall move the Court for an order (i) asserting jurisdiction over 80/20 Claims in the Litigation and Settlement; (ii) granting final approval of this Agreement as a fair and reasonable, arm's-length resolution of *bona fide* disputes under the FLSA; (iii) approving the Cover Letter; (iv) certifying the Settlement Collective Members as an FLSA collective pursuant to 29 U.S.C. § 216(b) for purposes of the FLSA 80/20 Claims and this Settlement only; (v) approving the request of Plaintiff's Counsel's attorneys' fees and costs; (vi) approving the service awards for the Named Plaintiff and other representative opt-ins; (vii) approving the Settlement Administrator; and (viii) entering final judgment on the 80/20 Claims and dismissing the 80/20 Claims with prejudice ("Motion for Final Approval"). Denny's shall have no obligation to make separate filings in support of the motion for settlement approval, but may do so at its election after the motion has been filed. Denny's shall appear at any hearing set by the Court regarding approval of the Settlement to confirm its agreement with the terms of the settlement as provided herein, or for any other purpose as directed by the Court. The Parties agree to the form and substance of the "Proposed Order of Final Approval," attached hereto as **Exhibit D**. Defendant shall not oppose in any way this Settlement or any of its terms and, instead, shall use its best efforts to help obtain approval of this Settlement.

B. In the event the Court does not approve any aspect of the Settlement as set forth herein, the Parties will work in good faith to resolve the Court's objections. If an objection cannot be resolved in a manner sufficient to obtain Court approval, then this Agreement will be deemed void *ab initio*.

14. **Effective Date.** The Effective Date shall be thirty-one (31) calendar days from the date of the entry of the Court's Approval Order. If an appeal is filed within the Appeal Period, then the Effective Date shall be the latest of: (i) the date of final affirmance of the Court's Approval Order; (ii) the expiration of the time for a petition for writ of certiorari to review the Approval Order if affirmed and, if the certiorari is granted, the date of final affirmance of the Approval Order following review pursuant to that grant; or (iii) the date of final dismissal of any appeal from the Approval Order or the final dismissal of any proceeding on certiorari to review the Approval Order that has the effect of confirming the Approval Order. If there is no Effective Date: (i) the Settlement Agreement shall have no force and effect and no Party shall be bound by any of its terms; (ii) Denny's shall have no obligation to make any payments required under this Agreement; and (iii) the Settlement Agreement and all negotiations, statements, proceedings, and data relating thereto shall be protected by Fed. R. Evid. 408 and shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in the Litigation as of the date Plaintiff filed her Motion for Final Approval of the Settlement Agreement. In such event, the Parties shall work cooperatively to request a conference with the Court in which to attempt to resolve any issues that the Court has raised regarding the Agreement so that they can obtain the Court's approval, or alternatively, effectuate their intent to resume litigation of the 80/20 Claims.

**15. Settlement Fund Distribution Procedure.**

A. Within seven (7) calendar days after the Final Approval Order, Plaintiff's Counsel shall provide the Settlement Administrator with the Schedule of Payments, in Microsoft Excel format, along with a list which includes for each Settlement Collective Member the following: last known address; last known email address; last known telephone number; and Social Security Number. By that same date, Denny's shall provide to the Settlement Administrator the clock in/out punch data for the Settlement Collective Members, their dates of employment as Servers, and the amount of tip credit claimed per hour for each Settlement Collective Member.

B. Within fourteen (14) calendar days of receipt of the Schedule of Payments, the Settlement Administrator shall determine all Employer Payroll Taxes relating to the Settlement Checks to Settlement Collective Members, and shall communicate that amount to Denny's and Plaintiff's Counsel with an explanation of the calculations. In the event of any dispute as to the calculations, the Parties and Settlement Administrator shall meet and confer in good faith in an attempt to resolve the dispute. If the dispute cannot be resolved, it shall be submitted to the Court for a final determination. The Settlement Administrator shall thereafter remit and report the applicable portions of the payroll tax payment to the appropriate taxing authorities on a timely basis. Denny's agrees to reasonably cooperate with the Settlement Administrator to the extent necessary to determine the amount of the payroll tax payment required under this Section.

C. Within seven (7) calendar days after the Effective Date, Denny's will deposit the Gross Settlement Amount with the Settlement Administrator, as directed in writing by the Settlement Administrator.

D. Within ten (10) calendar days after receipt of the Gross Settlement Amount, and subject to the Final Approval Order, Plaintiff's Counsel's Fees and Expenses will be paid to Plaintiff's Counsel out of the Gross Settlement amount. Plaintiff's Counsel shall provide executed IRS Forms W-9 to the Settlement Administrator.

E. Within ten (10) business days after receipt of the Gross Settlement Amount, and subject to the Final Approval Order, the Service Awards shall be paid to the Named Plaintiff and Representative Opt-Ins.

F. Within ten (10) business days after the receipt of the Gross Settlement Amount from Denny's, the Settlement Administrator will send Settlement Checks to each Settlement Collective Member with the Cover Letter. Participating Settlement Collective Members shall have one hundred twenty (120) calendar days from the date of the initial mailing of the checks by the Settlement Administrator to cash or deposit their settlement checks ("Acceptance Period"). At any point in the Acceptance Period, the Settlement Administrator shall have the authority to stop payment on a lost check and issue a new check to a participating Settlement Collective member upon request. The Administration Costs shall be paid from the Gross Settlement Amount.

G. No person shall have any claim against Denny's, Named Plaintiff, Plaintiff's Counsel, or Defendant's Counsel based on distribution or payments made in accordance with this Settlement Agreement.

16. **Settlement Administrator Report Required.** The Settlement Administrator shall send, on a monthly basis, a tracking spreadsheet which informs counsel for the Parties of the following information: (1) when Settlement Checks have been mailed; (2) when Settlement Check have been reissued because a Settlement Check was undeliverable; (3) whether a Settlement Check was undeliverable and had a forwarding address; (4) whether a Settlement Check was forwarded to a Settlement Collective Member's new address; (5) whether a Settlement Check was undeliverable and did not contain a forwarding address; (6) whether a Skip Trace has been performed; (7) whether the Skip Trace provided a new mailing address for a Settlement Collective Member; (8) whether the Settlement Check was mailed to the new Skip Trace address; (9) when Settlement Checks have been cashed; and (10) when Service Awards have been cashed.

17. **Withdrawal from Settlement.** In the event that a member of the Settlement Collective does not wish to participate in the Settlement, that individual shall file a "Notice of Withdrawal of Consent to Join Collective Action" with the Court in the form prescribed as **Exhibit E** within sixty (60) calendar days of the date of the initial mailing of the Settlement Checks by the Settlement Administrator. The filing of such a notice shall terminate the filing party's status as a member of the conditionally certified collective action in this Litigation for all purposes, including the FLSA Notice Claims. None of the terms of this Agreement, including the Release of Claims, shall have any force or effect on individual who terminates their status as a member of the conditionally certified collective action, and they will have no right to any recovery from this Settlement. The filing of such a form shall not be construed to affect the individual's status as a member of the Rule 23 Class certified in this Litigation. Nothing in this Agreement shall be construed as Denny's' consent to toll the limitations period for the 80/20 Claims at issue in this Litigation, or any other claims, or as a waiver of any defenses, in law or equity, to the claims in the Litigation.

18. **Unclaimed Funds.** The Settlement Administrator shall send an accounting of all unclaimed funds as well as a list of the names of all Settlement Collective Members who choose not to cash or deposit their Settlement Checks, and who did not otherwise withdraw from the Settlement, within forty-five (45) calendar days after the end of the Acceptance Period. Within ninety (90) days of the end of the Acceptance Period, the Settlement Administrator shall return to Denny's any unclaimed settlement funds via check payable to "Denny's, Inc.," and delivered to Denny's' Counsel via certified mail.

### **RELEASES**

19. **Settlement Collective Members' Released Claims.** In exchange for the consideration set forth in this Settlement Agreement, the Named Plaintiff, on behalf of herself and the Settlement Collective Members, knowingly, voluntarily, and completely release the Released Parties from liability for their 80/20 Claims, and any all claims that could have been brought under the FLSA, and all state or local laws, based on the same or similar factual allegations - claims for under compensation due to the performance of excessive side work and/or work unrelated to the employee's tipped occupation while clocked in under the "server" job code - arising from the Settlement Collective Members' employment with Denny's as a server during the Collective Period or arising out of or related to the negotiations or administration of the Settlement. Expressly excluded from this release are the Named Plaintiff's and the Settlement Collective Members' Notice Claims, or any claims based upon the same factual allegations as asserted in the Complaint. Settlement Collective 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, prosecuting, or voluntarily assisting in a lawsuit or adversarial proceeding against the Released Parties, based on claims released by them in this Settlement. All Settlement Collective Members who do not withdraw from the collective action in accordance with Paragraph 17 of this Agreement shall be bound by this release, regardless of whether they sign, deposit, or cash a Settlement Check.

### **ADDITIONAL PROVISIONS**

20. **No Retaliation.** Denny's shall not retaliate or take any adverse action against any Settlement Collective Member on the grounds that he/she is eligible to participate or does participate in the Settlement or endorses his/her Settlement Check.

21. **Noninterference.** Neither the Parties nor their counsel will encourage any person not to participate in the Settlement or object to the Settlement, or to appeal the Approval Order.

22. **Denny's' Legal Fees and Expenses.** In addition to all internal fees and costs relating to performance in accordance with the terms of this Settlement Agreement, Denny's' legal fees and expenses in the Lawsuit shall be borne solely by Denny's.

23. **Alteration of Material Terms and Severability.** Any alteration, by any court of competent jurisdiction or otherwise, of any material term in this Agreement shall permit either party, in its sole discretion, to void the Settlement entirely by providing written notice to Plaintiff' Counsel or Defense Counsel within seven (7) calendar days after the order excluding any of the above material terms to this Agreement. If either Party chooses to void the Settlement, then this Agreement will be vacated, rescinded, cancelled, and annulled, and the Parties will return to the status quo ex ante as if they had not entered into this Settlement Agreement. Moreover, should any provision, other than the material terms of this Settlement Agreement, be declared or be determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable, or invalid term, part or provision shall be deemed not to be a part of this Settlement Agreement.

24. **Restrictions On Public Statement.** If the Parties or counsel for the Parties are contacted by the press or media regarding the Settlement, they shall respond only that the matter has been resolved. The Parties and counsel for the Parties further agree not to issue a press release to media outlets or participate in press conferences or media interviews regarding the terms of the Settlement Agreement. Plaintiff's Counsel further agrees, subject to the other terms in this Paragraph, to otherwise refrain from publicizing the Settlement through social media (e.g., Facebook, LinkedIn, Twitter) on the internet. However, nothing about this Paragraph shall restrict Plaintiff's Counsel from citing to or referencing this Settlement in court filings, as necessary, including for purposes of seeking approval of the Settlement. Nothing in this provision will affect the ability of Plaintiff's Counsel to carry out their duties consistent with and as required by any other provision in this Agreement or by the Court or affect Plaintiff's Counsel's attorney-client communications.

25. **Parties' Authority.** The Parties are each represented by competent and experienced counsel, and they have had an opportunity to consult and have consulted with counsel prior to executing this Agreement. The signatories to this Settlement Agreement

represent that they are fully authorized to enter this Settlement Agreement and bind the Parties to the terms and conditions contained herein.

26. **Mutual Full Cooperation.** The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall act in good faith and cooperatively to effectuate this Settlement Agreement and the terms set forth herein. Neither Plaintiff Counsel's nor Defendant's Counsel, nor any of their agents, will take any actions or undertake any efforts to encourage any Settlement Collective Member to withdraw from or not participate in the Settlement. Nothing stated herein is intended to limit Plaintiff Counsel's ethical duties and obligations to their clients seeking advice or counsel as to this Settlement or their claims against Denny's.

27. **No Prior Assignment.** The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

28. **Construction.** The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arm's-length negotiations between the Parties. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Settlement Agreement.

29. **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof.

30. **Modification.** This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

31. **Integration Clause.** This Settlement Agreement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

32. **Binding On Assigns.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

33. **Governing Law.** This Settlement Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the Commonwealth of Pennsylvania, both in its procedural and substantive aspects, and shall be subject to the continuing exclusive jurisdiction of the Court. This Settlement Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party,



regardless of who drafted or who was principally responsible for drafting this Settlement Agreement or any specific term or condition thereof.

34. **Continuing Jurisdiction.** The Court shall 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 Agreement and of the Settlement contemplated thereby.

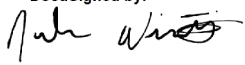
35. **Signatories and Counterparts.** Any Person executing the Agreement or any such related document on behalf of a corporate signatory warrants and promises for the benefit of all Parties that he or she has been duly authorized by such corporation to execute the Agreement or any such related document. The signatories hereby represent that they are fully authorized to enter into the Agreement and bind the Parties hereto to the terms and conditions hereof. The Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective spouses, heirs, trustees, and executors, administrators, successors, and assigns, including Denny's and the Released Parties. The Agreement may be executed in counterparts, including by electronic signature, including, without limitation, DocuSign, and when each Party has signed and delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken together with other signed counterparts, will constitute one Agreement, which will be binding upon and effective as to all Parties as set forth herein. Copies of signatures will be considered the same as an original signature.

36. **No Signature Required by Collective Members.** Only the Named Plaintiff, Defendant, and the respective counsel of each of them will be required to execute this Settlement Agreement. The Cover Letter will advise all Settlement Collective Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Collective Member.

[SIGNATURES ON FOLLOWING PAGE]

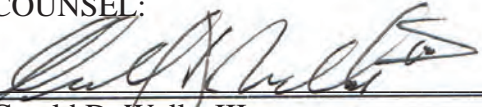
**JULI WINTJEN**, on behalf of herself and the Settlement Collective

[Date: 6/2/2023]

DocuSigned by:  
  
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APPROVED AS TO FORM BY PLAINTIFF'S COUNSEL:

[Date: 6/2/2023]

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

**DENNY'S, INC.**, a Florida Corporation

[Date: \_\_\_\_\_]

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

APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:

[Date: \_\_\_\_\_]

\_\_\_\_\_  
Darren W. Ford  
FARUKI PLL

**JULI WINTJEN**, on behalf of herself and the Settlement Collective

[Date: \_\_\_\_\_]

\_\_\_\_\_

APPROVED AS TO FORM BY PLAINTIFF'S COUNSEL:

[Date: \_\_\_\_\_]

\_\_\_\_\_

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

**DENNY'S, INC.**, a Florida Corporation

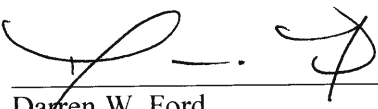
[Date: June 1, 2023]

DocuSigned by:  
*Gail Sharps Myers*  
403F9E1D8BB4434

By: Gail Sharps Myers  
Title: EVP, CLO & CPO

APPROVED AS TO FORM BY DEFENDANT'S COUNSEL:

[Date: June 1, 2023]

  
\_\_\_\_\_  
Darren W. Ford  
FARUKI PLL