

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Buffalo Wild Wings, Inc., BWW Resources, LLC, and Blazin Wings, Inc. (“BWW” or “Defendants”), on the one hand, and Joanne Depalo (the “Named Plaintiff”), on behalf of herself individually and on behalf of a collective group of similarly situated individuals, as defined in this Agreement, on the other hand.

BWW and the Named Plaintiff (collectively the “Settling Parties”) agree to take actions reasonably necessary and appropriate to obtain approval of this Agreement in arbitration, including but not limited to filing a stipulation of dismissal without prejudice in Civil Action No. 1:21-CV-4779-LMM, *Depalo, et al. v. Buffalo Wild Wings, Inc., et al.* (“the Litigation”) pending in the United States District Court for the Northern District of Georgia. This Agreement is contingent upon this Court’s dismissal of the Action and approval by the Arbitrator by a consent award. The Settling Parties represent and acknowledge that this Agreement is entered into voluntarily by them for the purpose of fully and finally resolving the claims asserted or that could have been asserted by the Named Plaintiff in the Litigation in a fair and reasonable manner.

RECITALS

WHEREAS, the Named Plaintiff has filed a complaint in the Litigation wherein she asserted claims against BWW, including but not limited to claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and applicable state law based on the alleged failure to pay the minimum wage to tipped employees, failure to provide compliant wage notices and statements and other claims; and

WHEREAS, additional individuals opted into the Litigation (“Opt-In Plaintiffs”).

WHEREAS, the purpose of this Agreement is to fully and finally resolve the claims asserted or that could have been asserted by the Named Plaintiff in the Litigation in a fair and reasonable manner; and

WHEREAS, BWW denies that it has committed any wrongdoing or violated applicable federal, state or local laws pertaining to the payment of wages or hours worked, and further denies that it is liable or owes any back wages, liquidated damages, attorneys' fees, costs or other damages or penalties to the Named Plaintiff, Opt-in Plaintiffs, and/or Potential Opt-in Plaintiffs (defined below) with respect to the alleged facts or causes of action asserted or which could have been asserted in the Litigation; and

WHEREAS, during the course of the Litigation, Named Plaintiff and BWW agreed to engage in discussions to resolve the asserted claims; and

WHEREAS, the Settling Parties have exchanged and reviewed pay, time worked, point of sale and other documents relating to the Named Plaintiff, Opt-in Plaintiffs and Potential Opt-in Plaintiffs; and

WHEREAS, the Settling Parties engaged in numerous meetings and discussions regarding potential resolution of the Litigation, participated in mediation sessions with experienced wage and hour mediator Hunter Hughes, Esq., including but not limited to a full day mediation session on July 24, 2023; and

WHEREAS, the Settling Parties reached an accord and outlined its terms in a Settlement Memorandum dated August 24, 2023 ("Settlement Memo"), signed by Counsel for the Settling Parties; and

WHEREAS, the Settlement Memo describes the terms of the settlement and the entities and individuals covered by its terms. The Settlement Memo is incorporated by reference herein; and

WHEREAS, by the Settlement Memo and this Agreement, the Settling Parties intend to fully and finally resolve any and all claims that have been or could have been asserted in the Litigation in order to avoid the burden, expense, risks and uncertainty of litigation.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, and intending to be legally bound, the Settling Parties hereto agree to a full and complete settlement of the Litigation and release of claims on the following terms and conditions:

I. CONSENT TO ARBITRATOR-FACILITATED NOTICE

A. Potential Opt-in Plaintiffs. For settlement purposes only, the Settling Parties consent to notify the Potential Opt-in Plaintiffs with the applicable terms and conditions of this Agreement by a notice attached hereto as Exhibit “A”. Potential Opt-in Plaintiffs are defined as the employees of BWW who were subject to a tip credit, regardless of exact work title, such as servers, bartenders or other job titles, employed in the United States and working for at least one week between November 18, 2019 and August 24, 2023 who have not yet filed a consent pursuant to the FLSA to join the Litigation.

B. Cooperation. The Settling Parties shall cooperate and present to the Arbitrator for his consideration in connection with an application for the issuance of a consent award approving and adopting the terms of this Agreement. To the extent BWW seeks to confirm the Arbitrator’s Award by a court, the Settling Parties shall agree to cooperate to achieve confirmation of the Arbitrator’s award. Regardless of whether BWW proceeds to seek judicial confirmation, the

Settling Parties agree to cooperate in the settlement process outlined herein, including but not limited to issuance of notice to the Potential Opt-in Plaintiffs, processing of their claims and issuance of payment in connection therewith and confirmation of the release of claims by the Named Plaintiff, the Opt-In Plaintiffs and the Potential Opt-in Plaintiffs.

II. SETTLEMENT APPROVAL PROCEDURE

A. Counsel for the Named Plaintiff shall provide a draft joint application for a consent award approving this Agreement to BWW's Counsel within ten (10) days of execution of this Agreement, provided that Named Plaintiff does not exercise her right to revoke. Counsel for BWW shall provide any comments to said draft application within fifteen (15) days of receipt. The Settling Parties shall work together in good faith to file the joint application consistent with this Agreement.

B. The Settling Parties have agreed to the form of the Notice of Settlement and the form of the Consent to Participate in Settlement, Collective Action, & Release of Claims ("Consent to Join Claim Form and Release" and, collectively with the Notice of Settlement, the "Notice Packet") which is attached to this Agreement as Exhibit A advising the Potential Opt-in Plaintiff of the material terms of this Agreement and their rights and obligations hereunder, and the procedure for submitting the Consent to Join Claim Form and Release. Except for the purpose of distributing the Notice Packet, effectuating a decision by BWW to confirm in court the consent award by an arbitrator that approves and adopts the terms of this Agreement, commencing a proceeding by any of the Settling Parties to enforce the terms of this Agreement or as otherwise authorized by this Agreement, the Settling Parties agree not to file this Agreement in a public record or otherwise disclose the terms of this Agreement.

C. Court Approval. Within fifteen (15) days of the issuance of the consent award by the Arbitrator approving and adopting the terms of the Agreement, BWW shall communicate to the Named Plaintiff its intention to seek or not to seek judicial confirmation of the consent award. To the extent BWW seeks judicial confirmation of the consent award, BWW shall commence such proceeding in a court of competent jurisdiction within ten (10) days of the issuance of the award. The Settling Parties agree to cooperate to effectuate the award's confirmation, including but not limited to filing a joint application and other necessary pleadings to request the court's confirmation of the consent award. In the event that BWW communicates its intention to not proceed to seek judicial confirmation of the consent award or fails to commence the confirmation proceeding within the fifteen (15) day period described in this paragraph, the Settling Parties agree to immediately proceed to the distribution of the Notice Packet and the related actions pursuant to the Agreement.

D. Effective Date. In the event BWW seeks judicial confirmation of the Arbitrator's order, the "Effective Date" for purposes of this Agreement shall mean (a) thirty-one (31) days after the date that the Court enters an order confirming the Arbitrator's order approving this Agreement; or (b) if an appeal occurs, thirty-one (31) days after the appeal is finally resolved. However, if the settlement is not approved, and/or does not become final for any reason, and/or the Court does not approve the Arbitrator's order, then the Settling Parties shall work together in good faith to structure a Settlement Agreement that meets approval. To the extent that BWW notifies the Named Plaintiff of its intention to not seek judicial confirmation or that the fifteen (15) day time period described in paragraph II(C) above has elapsed, the "Effective Date" shall mean the day after such notification by BWW or expiration of the fifteen (15) day period.

III. MODE, CALCULATION AND TIMING OF PAYMENT OF CLAIMS

A. Notice Packet

1. On or before sixty days (60) days after the Effective Date, BWW shall provide the Settlement Claims Administrator electronically with the names, last known addresses, email addresses, or mobile phone numbers, employee ID numbers, and dates of employment of the Potential Opt-in Plaintiffs with BWW between the dates of November 18, 2019 and August 24, 2023. Prior to the mailing of the Notice Packet, the Settlement Claims Administrator shall attempt to confirm the accuracy of the addresses through the United States Post Office's National Change of Address database and shall mail the Notice Packet to any updated address obtained therefrom.

Within thirty (30) days after the date on which BWW provides the names, last known addresses, email addresses, or mobile phone numbers, employee ID numbers, and dates of employment of the Potential Opt-in Plaintiffs to the Settlement Claims Administrator, the Settlement Claims Administrator shall transmit either by e-mail, text message, or First Class mail with an enclosed, postage-paid return envelope to the Potential Opt-in Plaintiffs, in one distribution, all Notice Packets in the form attached hereto as Exhibit A.¹ Each of the Potential Opt-in Plaintiffs will be provided with the Notice Packet, which informs the Potential Opt-in Plaintiff that in order to receive any monetary proceeds of the settlement, the original, properly-executed and completed Consent to Join Claim Form and Release must be postmarked or received by mail, email, online via electronic fillable consent form, or facsimile by the Settlement Claims

¹ The Named Plaintiff and the Opt-in Plaintiffs shall not have to file a claim in order to qualify for their payment. The release of claims for the Named Plaintiff and the Opt-In Plaintiffs shall be included on the backs of their settlement checks with language indicating that depositing or cashing the check constitutes acceptance of the release of claims. The Parties agree that depositing or cashing a settlement check shall render the release provision contained in the back of the settlement check to be fully enforceable and have the effect of releasing BWW and all other Releasee Parties from liability to all claims covered under this Agreement.

Administrator on or before sixty (60) days after the date the Notice Packets were initially mailed to them (the “Claim Bar Date”). Regardless of the method of transmission of the signed Consent to Join Claim Form and Release, Potential Opt-in Plaintiffs must have returned to the Settlement Claims Administrator a Consent to Join Claim Form and Release that bears either an original signature or an electronic copy of same.

2. If any Notice Packet is returned as undeliverable, the Settlement Claims Administrator shall promptly attempt to locate such individual through an electronic search. Any Notice Packet returned undeliverable shall be traced once to obtain a new address and be reissued within ten (10) business days after their return as undeliverable. Such person(s) shall be permitted fifteen (15) days from any reissue of the Notice Packet(s) to submit their claim form (“Re-mailing Opt-in Period”).

3. In the event that Counsel for the Named Plaintiff or the Settlement Claims Administrator is contacted by a Potential Opt-in Plaintiff before the Claim Bar Date and the Potential Opt-in Plaintiff indicates that he or she did not receive the Notice Packet, the Settlement Claims Administrator shall issue an additional Notice Packet to the mailing address or email address provided and any such person shall be permitted to submit their claim form during the Re-mailing Opt-in Period (defined above).

4. In the event any Consent to Join Claim Form and Release is timely submitted but does not contain a signature or sufficient information to confirm the identity of the Potential Opt-in Plaintiff, the Settlement Claims Administrator shall promptly provide the Potential Opt-in Plaintiff, within seven (7) business days, with a letter requesting the information that was not provided (“Cure Letter”). The Cure Letter shall inform the Potential Opt-in Plaintiff that they must respond by the later of ten (10) days from the mailing of such Cure Letter or the Claim Bar Date.

Any Potential Opt-in Plaintiff who fails to respond timely to a Cure Letter will not be considered a Qualified Claimant (as defined below).

5. In the event of any dispute over a Potential Opt-in Plaintiff's signature and/or the late submission of any claims, the Settling Parties will meet and confer in good faith in an effort to resolve the dispute, and if the Settling Parties are unable to reach an agreement, the Settlement Claims Administrator shall decide the dispute based on the applicable facts and circumstances, and its decision will be final.

6. The Potential Opt-in Plaintiffs who timely return completed and executed Consent to Join Claim Forms and Releases will be considered "Qualified Claimants" entitled to receive their finalized share of the Net Settlement Fund (as defined in paragraph III(F)(1) below). The Parties agree that Named Plaintiff and the current Opt-In Plaintiffs will receive a payment as set forth herein and are already Qualified Claimants by virtue of their prior consent. Within fifteen (15) business days after the Claim Bar Date or Re-mailing Opt-In Period (whichever is later), the Settlement Claims Administrator shall provide to BWW's Counsel and Counsel for the Named Plaintiff a list of Qualified Claimants with each Qualified Claimant's employee ID number. The Settlement Claims Administrator shall further provide electronic copies of all timely received and completed forms, including Consent to Join Claim Forms and Releases submitted by Potential Opt-in Plaintiffs, as well as returned checks with endorsements. Within fifteen (15) business days of receipt of the list of Qualified Claimants, BWW will provide only the Settlement Claims Administrator, and no other person or entity, the social security number and location worked for each Qualified Claimant to be used for tax purposes. Within twenty-five (25) business days after the Claims Bar Date, the Settlement Claims Administrator shall provide to Counsel for the Named Plaintiff a spreadsheet that identifies the name of each Qualified Claimant with each Qualified

Claimant's dates of employment as limited in paragraph III(A)(1) and state where each Qualified Claimant worked. Counsel for the Named Plaintiff will then determine the allocation to each Qualified Claimant and provide that allocation and the underlying formula to BWW's Counsel to review and approve, which approval will not be unreasonably withheld, and the Settlement Claims Administrator. BWW shall communicate any objection and proposed modification to the allocation within five (5) business days of its receipt of same from Counsel for the Named Plaintiff. The Parties will confer in good faith to reach a resolution. Any dispute will be submitted to the Arbitrator for determination. All disputes relating to the allocation shall be decided by the Arbitrator within five (5) business days from the date when BWW's Counsel communicates BWW's objection to the allocation. The Arbitrator's decision concerning the allocation shall be final and binding on the Parties. Within five (5) business days after receipt of the consented to or binding allocation from Counsel for the Named Plaintiff, the Settlement Claims Administrator shall notify BWW's Counsel and Counsel for the Named Plaintiff of the amount necessary to fund all Settlement Payments to Qualified Claimants as well as the employer's share of payroll taxes ("Employer's Share of Payroll Taxes.") However, in the event that more than 27.5% of all Potential Opt-in Plaintiffs submit claims, the parties shall meet with the Arbitrator in order to discuss a negotiated resolution. BWW shall have the right to declare the Agreement null and void in the event a negotiated resolution cannot be attained with the Arbitrator. In the event that BWW voids this Agreement pursuant to this paragraph, then Plaintiff has the option to refile the Litigation in the United States District Court for the Northern District of Georgia against BWW and the statute of limitations for her claims and the claims of the Opt-In Plaintiffs shall revert to the date they originally filed their consent forms in the Litigation. Additionally, all other tolling

agreements entered in the Litigation will remain in effect in the event that BWW voids this Agreement pursuant to this paragraph.

7. At the conclusion of the settlement administration process, the Settlement Claims Administrator shall provide an electronic copy of all Consent to Join Claim Forms and Releases, and return checks with endorsements received by the Potential Opt-in Plaintiffs to Counsel for BWW and Counsel for the Named Plaintiff. The Settlement Claims Administrator shall also provide Counsel for BWW and Counsel for Named Plaintiff a register listing all Qualified Claimants and the payment amount made to each Qualified Claimant, including the amount of tax withholdings and the Employer's Share of Payroll Taxes. The Settlement Claims Administrator should further maintain copies of all documents provided to Counsel for BWW and Counsel for Named Plaintiff for a period of six (6) years from August 24, 2023.

B. BWW's Payment Obligations

1. Total Settlement Amount. In consideration for the dismissal of the Litigation as well as the release of claims effected by this Agreement and other good and valuable consideration, BWW shall be obligated to pay no more than a maximum of Ten Million Dollars and Zero Cents (\$10,000,000.00) (the "Total Settlement Amount") to settle the Litigation. Subject to the terms of this Agreement, the Total Settlement Amount is inclusive of payment for: (1) all settlement amounts to be paid to the Qualified Claimants; (2) all attorneys' fees (as described in paragraph III(F)(1)(b) below); (3) Counsel for Named Plaintiff's litigation costs of \$56,322.60; (4) the \$10,000 additional consideration paid to Named Plaintiff ("Service Payment"); and (5) the Qualified Claimants' share of applicable federal, state and local taxes required to be withheld by BWW. The costs of the Arbitrator, the expenses of the Settlement Administration, and the Employer's Share of Payroll Taxes required to be paid by BWW shall be paid by BWW in addition

to the Total Settlement Amount. All undistributed, unclaimed and/or unpaid amounts as described below in this Agreement after completion of the settlement process shall be returned to the possession of BWW, unless otherwise indicated.

C. Timing of Payment. Within ten (10) days after the Settlement Claims Administrator provides BWW with the total needed to fund the settlement as well as necessary tax forms, wire instructions and other paperwork from the Settlement Claims Administrator necessary for BWW to process a wire payment, BWW shall pay by wire transfer to a Qualified Settlement Fund (“QSF”) established by the Settlement Claims Administrator, as set forth in paragraph III(E)(1) below the following: 1) an amount sufficient to fund the Named Plaintiff’s attorneys’ fees and litigation costs; 2) Service Payment to Named Plaintiff; 3) an amount sufficient to fund all Settlement Payments to Qualified Claimants as well as the Employer’s Share of Payroll Taxes; 4) costs of settlement administration; and 5) the costs of the Arbitrator.

D. Settlement Claims Administration

1. Selection of Settlement Claims Administrator. The Parties agree to cooperate in the selection of a Settlement Claims Administrator, which shall be selected and engaged within five business days after the Parties’ execution of the Agreement.

2. Settlement Claims Administrator Responsibilities. The Settlement Claims Administrator shall be responsible in general for: (a) determining and finalizing the calculations of the tax withholding amounts and employer payroll tax amounts for the Qualified Claimants, as applicable based upon the Individual Settlement Payments (as defined below) provided by Counsel for the Named Plaintiff; (b) preparing, printing and disseminating the Notice Packet and return envelope in a final form and format approved by Counsel for BWW and the Named Plaintiff; (c) copying Counsel for the Settling Parties on material correspondence and promptly notifying all

Counsel for the Settling Parties of any material requests or communications made by any Potential Opt-in Plaintiff who receives notice; (d) establishing, monitoring and maintaining a toll-free number; (e) receiving and reviewing the Consent to Join Claim Forms and Releases submitted by Potential Opt-in Plaintiffs; (f) confirming the final Settlement Payment in accordance with this Agreement; (g) distributing the settlement checks to Qualified Claimants; (h) wiring Counsel for the Named Plaintiff's attorneys' fees and litigation costs in accordance with this Agreement; (i) remitting all payroll tax obligations of BWW in accordance with this Agreement; (j) issuing W-2 and 1099 Forms for all amounts paid to Qualified Claimants; (k) ascertaining the last-known contact information for Opt-in Plaintiffs and Potential Opt-in Plaintiffs; (l) responding to inquiries of the Potential Opt-in Plaintiffs; (m) responding to inquiries of Counsel for BWW and Counsel for the Named Plaintiff; (n) promptly apprising Counsel of the activities of the Settlement Claims Administrator; (o) maintaining adequate records of its activities, including the date of the mailing of Notice Packets and receipt of Consent to Join Claim Forms and Releases, returned mail and other communications and attempted written or electronic communications with the Potential Opt-in Plaintiffs, and providing Counsel with weekly reports regarding the same; (p) confirming in writing to Counsel to BWW and Counsel to the Named Plaintiff its completion of the administration of the settlement, retaining copies of all endorsed settlement checks for a period of six years and providing access to these checks upon request by Counsel for the Parties; (q) timely responding to communications from the Potential Opt-in Plaintiffs; and (r) such other tasks as customarily and regularly performed by a Settlement Claims Administrator and as the Settling Parties mutually agree.

3. Settlement Fund Fees and Expenses. All costs of the Settlement Claims Administrator related to its duties under this Agreement, and any other related duties (collectively

referred to as the “Settlement Administration Costs”) shall be paid by BWB in addition to the Total Settlement Amount.

4. Reporting by Settlement Claims Administrator. Throughout the period of claims administration, the Settlement Claims Administrator will provide such reports to the Settling Parties upon request by either Settling Party, regarding the status of the mailing of the Notice Packets, the claims administration process, the receipt of Consent to Join Claim Forms and Releases, and distribution of the Settlement Checks or any other aspect of the claims administration process.

E. Creation and Implementation of a Qualified Settlement Fund

1. Establishing the Qualified Settlement Fund. The Settlement Claims Administrator shall prepare a Qualified Settlement Fund (the “Settlement Account”), intended by the Settling Parties to be a “Qualified Settlement Account” as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, *et seq.* The Settlement Account shall be established as a Qualified Settlement Account within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg. Section 1.468B-1, *et seq.*, and shall be administered by the Settlement Claims Administrator, subject to the ultimate authority of the Arbitrator.

2. Administering the Settlement Fund. The Settlement Claims Administrator shall serve as Trustee of the Settlement Account and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Amount, including the handling of tax-related issues and payments. The Settlement Claims Administrator shall act in a manner necessary to qualify the Settlement Account as a Qualified Settlement Account and to maintain that

qualification. The Settling Parties shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment.

F. Allocation of the Settlement Fund

1. Net Settlement Fund. The “Net Settlement Fund” means the remainder of the Total Settlement Amount after deductions for: (i) \$4,000,000 for attorneys’ fees (“Attorneys’ Fees”); (ii) \$56,322.60 for litigation costs (“Costs”), and (ii) \$10,000 for the Service Payment to the Named Plaintiff.

- a. Allocation of Net Settlement Fund. Counsel for the Named Plaintiff shall calculate the estimated individual settlement payment amounts based upon the number of weeks or hours. All Qualified Claimants shall be paid a portion of the Net Fund (Net Fund = Gross Fund less Counsel for Named Plaintiff’s attorney’s fees and expenses, and Service Payment) determined primarily by the number of weeks worked for BWB or work hours that subject to the tipped credit between November 18, 2019 and August 24, 2023 with an average payout of **\$215 per person**.
- b. Attorneys’ Fees and Costs Amounts. Counsel for the Named Plaintiff shall make an application to the Arbitrator for an award of Attorneys’ Fees and Costs in the amount of \$4,056,322.60 (four million fifty-six thousand three hundred and twenty-two dollars and sixty cents). BWB will not join in nor will it oppose Counsel for the Named Plaintiff’s request for fees and costs. Payment of such approved Attorneys’ Fees, and Costs to Counsel for the Named Plaintiff shall be made within fourteen (14) days after the conclusion of the notice period, assuming BWB does not exercise its right to void this Agreement. The Settlement Claims Administrator shall report the payment of these fees, expenses and costs to Counsel for the Named

Plaintiff on an IRS Form 1099. Within ten (10) business days of the Settlement Claims Administrator's receipt of the wire transfer from BWW to the QSF, in accordance with paragraph III(C), supra, the Settlement Claims Administrator shall pay to Counsel for the Named Plaintiff by wire transfer the amount of Attorneys' Fees and Costs as indicated herein.

- c. **Additional Consideration.** The Settlement Claims Administrator shall pay as a Service Payment \$10,000 (ten thousand dollars and zero cents) to the Named Plaintiff in addition to the Named Plaintiff's settlement amount, in exchange for the Named Plaintiff signing this Agreement containing a General Release. BWW will not oppose Counsel for the Named Plaintiff's request for approval of the Service Payment. Payment of such approved Service Payment shall be made in accordance with this Agreement.

G. Payments to Qualified Claimants

1. **Timing of Payments.** The Settlement Claims Administrator shall calculate the estimated settlement awards net of the employee side taxes. Only Qualified Claimants shall be entitled to receive an Individual Settlement Payment. The Settlement Claims Administrator will transmit the Individual Settlement Payment by first-class U.S. Mail to the last known address for such Qualified Claimant, or such other address provided to the Settlement Claims Administrator, within thirty (30) business days after the BWW wires the settlement payment to the QSF, subject to the withholding and reporting requirements set forth below.

2. **Taxes on the Individual Settlement Payments.** The Individual Settlement Payments attributed to the Qualified Claimants shall be allocated 50% to back wages and 50% to liquidated damages and interest. The back wages shall be subject to all required employee-paid

payroll taxes (federal income taxes, state income taxes, employee's share of FICA and FUTA taxes, and other state or local-specific statutory deductions) and other authorized or required deductions (garnishments, tax liens, child support, etc.). The liquidated damages and interest shall be treated as non-wage income to the Qualified Claimant. The Settlement Claims Administrator shall report the back-wage payments to the Internal Revenue Service ("IRS") on IRS Form W-2 and shall report the liquidated damages, interest and Service Payment on IRS Form 1099.

3. No Tax Advice. Named Plaintiff acknowledges and agrees that she has not relied upon any advice from BWW or its Counsel or Counsel for the Named Plaintiff as to the taxability of the payments received pursuant to this Agreement.

4. Negotiation of Settlement Checks. Qualified Claimants shall have ninety (90) days after the date on the settlement checks (the "Check Issuance Date") in which to present the check for payment. If any Qualified Claimant does not present his or her settlement check for payment within 90 days after the Check Issuance Date, the check will be void and the gross amount of the Individual Settlement Payment shall revert to BWW. Any such Qualified Claimant who does not present his/her settlement check for payment by the Check Issuance Date shall not be bound by the release of claims and his/her consent to participate in the settlement covered by this Agreement shall be null and void.

H. Payments Back to BWW

The Settling Parties agree that any funds remaining in the Qualified Settlement Fund thirty (30) days after all of the following payments have occurred: (1) Individual Settlement Payments (after the expiration of the 90-day period); (2) all Attorneys' Fees and Costs of Counsel for the Named Plaintiff; (3) arbitration costs; (4) Service Payment to the Named Plaintiff, (5) Settlement Administration Costs, and (6) all applicable taxing agencies for all applicable federal, state and

local income taxes, shall revert to BWW and must be returned to BWW within ten (10) business days after expiration of the 30 day period referenced in this paragraph H.

IV. RELEASE

A. General Release by the Named Plaintiff. In consideration of the representations and covenants undertaken by BWW in this Agreement, including, but not limited to, the Service Payment described in Paragraph 3(F) of this Agreement, the Named Plaintiff on behalf of herself and her heirs, estate, executors, trustees, administrators, representatives, agents, attorneys, advisors, successors and assigns (individually and collectively, the “Releasors”) hereby fully and generally releases, acquits and forever discharges, and promises forever not to sue BWW and/or or any of the BWW’s past, present or future parent entities, subsidiaries, affiliates, , any and all of its current, former or future directors, officers, members, principals, partners, shareholders, investors, owners, employees, contractors, attorneys, advisors, auditors, representatives, insurers, benefit plans, and agents, and/or any and all predecessors, successors, and assigns of any, all and/or each of the foregoing entities and persons (individually and collectively, the “Released Parties”), from and with respect to any and all claims (including, but not limited to all state and federal claims for unpaid minimum wages, straight time wages, overtime wages, wage notices and statements, and related claims for penalties, interest, liquidated damages, attorneys’ fees, costs, and expenses (the “Released Wage Claims”)), actions, suits, liabilities, debts, demands, controversies, contracts, agreements, obligations, damages, judgments, causes of action, and contingencies whatsoever, including, but not limited to, attorneys’ fees and costs, in law or in equity, known or unknown, suspected or unsuspected, asserted or unasserted, which against BWW and/or any of the other Released Parties, the Named Plaintiff and/or any of the other Releasors has, have, may have had at any time up to the date on which the Named Plaintiff timely executes this Agreement, or ever

had or may have for, upon or by reason of any matter, cause, act, omission, decision, conduct, statement, occurrence or thing whatsoever from the beginning of the world through the date on which the Named Plaintiff timely executes this Agreement (individually and collectively, “Claims”). Claims include, but are not limited to, to the maximum extent permitted by law: (i) any and all of the Released Wage Claims; (ii) any and all Claims arising out of, in connection with or in any way related to the Named Plaintiff’s employment with or by BWB and/or any and all of the other Released Parties or otherwise, the terms and conditions of such employment, and/or the termination of such employment; (iii) any and all Claims constituting, comprising and/or that were or could have been asserted or alleged in, as part of, or arising out of, in connection with or in any way related to the Complaint and/or the Released Wage Claims; (iv) any and all Claims for compensation, salary, wages, fees, bonuses, severance pay, expenses, reimbursements, paid time off, leaves of absence, and/or any and all other payments and benefits; (v) any and all Claims for discrimination, harassment or hostile work environment, whether based on sex, gender, race, disability, perceived disability, age, or any other protected category or characteristic; (vi) any and all Claims for retaliation; (vii) any and all Claims for failure to provide reasonable accommodation for any actual or alleged disability or perceived disability; (viii) any and all Claims under any federal, state, or local law, regulation, or ordinance, including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act (“ADEA”), the Civil Rights Act of 1991, Section 1981 of U.S.C. Title 42, the Employee Retirement Income Security Act, the Fair Labor Standards Act, the Family Medical Leave Act, the Families First Coronavirus Response Act, the New York State Human Rights Law, the New York City Human Rights Law, the New York State Executive Law, the New York City Administrative Code, the New York Labor Law, the New York Wage and Hour Law, the New

York COVID-19 Sick Leave Law, the New York State Sick Leave Law, the New York State Paid Family Leave Law, the New York City Earned Safe and Sick Time Act, or any other federal, state or local law (statutory or decisional), regulation or ordinance including, but not limited to, those prohibiting employment discrimination, harassment, hostile work environment, and/or retaliation; (ix) any and all Claims arising out of, in connection with or in any way related to any agreement (actual or alleged, written or oral) between the Named Plaintiff (on the one hand) and BWW and/or any of the other Released Parties (on the other hand); (x) any and all Claims under common law including, but not limited to, any and all Claims for any tort, emotional distress, assault, battery, physical, mental or psychological injury, fraud, fraudulent inducement, breach of contract (express or implied, written or oral), quasi contract, promissory estoppel, equitable estoppel, unjust enrichment, quantum meruit, detrimental reliance, violation of public policy, or wrongful or constructive discharge and (xi) any and all Claims for compensatory damages, punitive damages, exemplary damages, liquidated damages, and/or attorneys' fees, costs, disbursements and the like, or otherwise. The Named Plaintiff intends this release to be, and this release by her is, a general release of any and all Claims to the fullest extent permissible by law. However, nothing in this Agreement shall serve as a release of any (1) claim or right to enforce this Agreement or (2) any claim or right that cannot be released as a matter of law by private agreement.

B. The Named Plaintiff represents and warrants that she has not previously filed a complaint, charge, action, proceeding, litigation or lawsuit against the BWW and/or any of the other Released Parties regarding any of the Claims released herein.

C. Release By Qualified Claimants. Conditioned upon the Arbitrator and Court's approval of the settlement, if BWW seeks Court approval, and in exchange for the monetary consideration recited in this Agreement, the Named Plaintiff who signs this Settlement Agreement

and each Qualified Claimant shall waive, release and forever discharge the Released Parties from any and all wage and hour and related common law-claims under Federal and applicable state and local law that accrue from November 18, 2019 through the date of the signing of the Agreement, including, without limitations, the Released Wage Claims. This paragraph shall be construed broadly to include the maximum extent of “wage and hour” claims including any claims related to the amount or timing of any payment of wages. Such release includes but is not limited to state law wage payment and wage assignment statutes.

D. Covenant Not to Sue. In consideration of the promises made in this Agreement, Qualified Claimants agree never to institute any suit, complaint, proceeding, grievance, or action of any kind at law, in equity, or otherwise in any court of the United States, state, or municipality against the Released Parties, to pursue the Released Wage Claims. Qualified Claimants also agree that they will not join, participate in, or consent to join any collective action in which they allege to be similarly situated to any other current or former employee of BWW for any claim released herein, and that they will elect to opt out of any class action against the Released Parties of which they are involuntarily made a member or participant in connection with the Released Wage Claims. Qualified Claimants agree that they may not use any event, occurrence, or purported fact occurring prior to the date of this Agreement as evidence in, or the subject matter of, any future lawsuit or proceeding against the Released Parties, except in an action instituted by any Party alleging a breach of this Agreement. Qualified Claimants further agree that the covenant not to sue described in this paragraph is an essential and material term of this Agreement and that no settlement could have been reached by the Parties without this provision. Qualified Claimants affirm that they understand and acknowledge the significance and consequence of this provision.

E. Release of ADEA Claims. As stated in paragraphs IV(A), (B) & (D) above, this waiver and release and covenant not to sue specifically apply to any and all causes of action under the ADEA, except for a legal challenge to the validity of Named Plaintiff's ADEA waiver and release. Named Plaintiff acknowledges that part of the consideration set forth in this Agreement (including but not limited to Named Plaintiff's Service Payment), is provided specifically in order to secure this waiver of age-related claims.

F. Consideration Period. Named Plaintiff understands that she has twenty-one (21) calendar days from the date of her receipt of the Agreement to consider whether or not to execute the Agreement. Named Plaintiff agrees that any modification to this Agreement after its initial receipt by Named Plaintiff does not restart or otherwise extend the twenty-one (21) day consideration period, except as otherwise provided by applicable law.

G. Revocation. Named Plaintiff understands that she may revoke the Agreement at any time up to and including seven (7) calendar days after execution of the Agreement, by a writing received by Counsel for BWW pursuant to the notice provision under the Agreement within that time period.

H. Acknowledgment of the Release of Rights. **NAMED PLAINTIFF UNDERSTANDS AND ACKNOWLEDGES THAT SHE IS GIVING UP ALL OF HER RIGHTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO THOSE UNDER THE ADEA AND THOSE COVERED BY THE GENERAL RELEASE AGAINST BWW (AND THE OTHER RELEASED PARTIES), KNOWN OR UNKNOWN, AS DESCRIBED IN THE AGREEMENT.**

V. NOTICES

A. Form and Delivery of Communications. All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class mail to the undersigned persons at their respective addresses as set forth herein or as otherwise noticed in writing by Counsel:

Counsel for Named Plaintiff: Don J. Foty, Esq.
Hodges & Foty, LLP.
2 Greenway Plaza., Suite 250
Houston, TX 77006
Telephone: (713) 523-0001
dfoty@hftrialfirm.com

Counsel for BWW: Eric Su
Crowell & Morning, LLP
590 Madison Avenue #20th
New York, NY 10022
Telephone: (212) 803-4041
esu@crowell.com

VI. REPRESENTATION BY COUNSEL

All of the Settling Parties acknowledge that they have been represented by Counsel throughout all negotiations that preceded the execution of this Agreement and that this Agreement has been executed with the consent and advice of Counsel.

VII. MODIFICATION OF AGREEMENT

This Agreement may not be modified or amended except in writing, signed by the affected Settling Parties or the respective counsel of record for the Settling Parties and as approved by the Arbitrator.

VIII. CONFIDENTIALITY AND PUBLICITY

A. The Parties (including their Counsel) shall not issue any press release, website posting or issue any social media content about the Settlement Agreement or its terms. The Settling Parties shall respond to media only with the acknowledgment that “the matter was amicably resolved.”

B. Notwithstanding the foregoing, the Named Plaintiff, Counsel for the Named Plaintiff, the Defendants and the Defendants’ Counsel shall have the right to disclose this Agreement as may be required under federal or state tax and/or securities laws, under generally accepted accounting principles and under the ethical rules governing the professional conduct of attorneys, and may disclose the Agreement and underlying facts and circumstances thereof in filings in any court. Nothing herein shall limit the ability of Counsel for the Named Plaintiff and Named Plaintiff to communicate with Potential Opt-in Plaintiffs.

C. Nothing in this Settlement Agreement shall prohibit Counsel for the Named Plaintiff or the Defendants’ Counsel from disclosing information concerning this Agreement to the Settlement Claims Administrator and to their employees or their agents to effectuate the terms of this Agreement. Moreover, nothing in this Agreement shall prohibit Defendants from disclosing information concerning this Agreement to their employees or agents to the extent necessary to effectuate the terms of this Agreement or to other individuals who otherwise have a need to know the terms of this Agreement. Defendants and their Counsel may also disclose the terms of this Agreement in connection with seeking indemnification and/or contribution from any other person(s) or entit(ies). The Parties may also disclose information concerning this Agreement to their respective Counsel and tax, audit, and legal advisors. Counsel for the Named Plaintiff will promptly notify Defendants’ Counsel of any third-party legal demand that they disclose information pertinent to the Settlement or this Settlement Agreement.

D. Nothing herein shall preclude the Settling Parties from enforcing or effectuating the terms of this Agreement.

IX. CONSTRUCTION AND INTERPRETATION

A. Entire Agreement. This Agreement constitutes the entire agreement between the Settling Parties with respect to the subject matter contained herein and shall supersede all prior and contemporaneous negotiations between the parties, including the terms of the Settlement Memo. This 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 Agreement, or any specific term or condition thereof. The Named Plaintiff and BWW participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither the Named Plaintiff nor BWW may claim that any ambiguity in this Agreement should be construed against the other.

B. Controlling Law. This Agreement shall be subject to, governed by, construed, enforced and administered in accordance with the laws of the State of Georgia, both in its procedural and substantive aspects, and without regard for the principle of conflict of laws, and shall be subject to the continuing jurisdiction of the Arbitrator.

C. Severability. If any provision of this Agreement is held by a court of competent jurisdiction or arbitrator to be void, voidable, unlawful or unenforceable, except the Release, the remaining portions of this Agreement will remain in full force and effect to the extent that the effect of the Agreement remains materially the same and the obligations of the Settling Parties remain materially the same. Nothing in this Agreement shall be deemed to infringe upon employee rights under the National Labor Relations Act (“NLRA”) or be incompatible with the NLRA or other applicable law.

X. AGREEMENT TO ARBITRATE

The Parties agree and acknowledge that for the purpose of resolving the claims asserted in the Litigation, they are submitted to the alternative dispute procedures set forth in BWW's Employment Arbitration of Disputes Program and Mutual Arbitration Agreement ("Arbitration Agreement"), to which Qualified Claimants acknowledge they are bound for purposes of this Agreement, and the terms of which are fully incorporated by reference herein except as otherwise provided below. For the purpose of achieving a full resolution of the claims asserted in the Litigation pertaining to Qualified Claimants, the Parties agree to pursue adjudication and resolution, and have proceeded to adjudicate and resolve these claims, before the Arbitrator. The collective and class action waivers set forth in the Arbitration Agreement are modified only to the extent that allows the disputes covered by this Agreement to be resolved by the Arbitrator. The Parties stipulate and agree that the Arbitrator appropriately exercised his jurisdiction in hearing and resolving the dispute covered under this Agreement, approving the terms of this Agreement and issuing the Consent Award. Nothing herein shall be deemed as waiver by BWW concerning its rights to invoke coverage or applicability of the Arbitration Agreement for disputes not covered by this Agreement. However, in the event this Settlement Agreement is declared void by BWW or not approved by an arbitrator or court, this Agreement to Arbitrate shall be void and have no force or effect on any party, including the Named Plaintiff, the Opt-In Plaintiffs, and the Potential Opt-In Plaintiffs.

XI. COUNTERPARTS

This Agreement, any amendments or modifications to it, and any other documents required or contemplated to be executed in order to consummate this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement. All

counterparts of any such document together shall constitute one and the same instrument. A photocopy, facsimile, or digital image of an executed counterpart shall be enforceable and admissible as an original.

XII. BINDING EFFECT

This Agreement is binding upon and shall inure to the benefit of the Settling Parties to this Agreement. Without limiting the foregoing, this Agreement specifically shall inure to the benefit of BWW as well as its present and former owners, stockholders, predecessors, successors, joint ventures, assigns, agents, directors, officers, board members, employees, representatives, insurers, attorneys, parents, subsidiaries, affiliated divisions and companies, and all persons acting by, through, under or in concert with any of them. Also without limiting the foregoing, this Agreement shall be binding upon the heirs, assigns, administrators, executors, beneficiaries, conservators, and successors of all Qualified Claimants.

XIII. PARTIES AND QUALIFIED CLAIMANTS BEAR THEIR OWN ATTORNEYS' FEES, COSTS AND EXPENSES

Except as otherwise specifically provided herein, the Settling Parties and all Qualified Claimants shall bear responsibility for their own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them or arising out of the Litigation and shall not seek reimbursement thereof from any party to this Agreement. However, in the event of any dispute to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of their reasonable attorneys' fees and costs from the non-prevailing party as awarded by the Arbitrator pursuant to this Agreement.

XIV. AUTHORITY OF COUNSEL

A. Facsimile, Electronic, and Email Signatures. Any Settling Party may execute this Agreement by signing or by causing its Counsel to sign on the designated signature block below and transmitting that signature page *via* facsimile, email, or other electronic means to Counsel for the other Settling Party. Any signature made and transmitted by facsimile, email, or other electronic means for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Settling Party whose Counsel transmits the signature page by facsimile or email.

B. Voluntary Signature. All Settling Parties agree that they have signed this Agreement, or authorized their Counsel to sign this Agreement on their behalf, knowingly, voluntarily, with full knowledge of its significance, and without coercion.

C. Warranty of Counsel. Counsel for the Named Plaintiff warrant and represent that they are expressly authorized by the Named Plaintiff to take all appropriate action required or permitted to be taken pursuant to this Agreement in order to effectuate its terms. Counsel for BWW warrant and represent that they are authorized to take all appropriate action required or permitted to be taken by BWW pursuant to this Agreement in order to effectuate its terms.

D. Election to Execute Prior to Expiration of Twenty-One (21) Day Period. Named Plaintiff understands that Named Plaintiff has at least twenty-one (21) days to consider and execute this Agreement. Named Plaintiff acknowledges and agrees that any modifications to this Agreement after its initial receipt by her did not restart or otherwise extend the original twenty-one (21) day consideration period unless otherwise provided by applicable law. After having the

opportunity to consult with counsel, however, Named Plaintiff has freely and voluntarily elected to execute this Agreement prior to expiration of the twenty-one (21) day period.

DATED: October ____, 2023

ON BEHALF OF BUFFALO WILD WINGS, INC.

By: _____

Its: _____

DATED: October ____, 2023

ON BEHALF OF BWW RESOURCES, LLC

By: _____

Its: _____

DATED: October ____, 2023

ON BEHALF OF BLAZIN WINGS, INC.

By: _____

Its: _____

10/24/2023

DATED: October ____, 2023

JOANNE DEPALO

DocuSigned by:
Joanne DePalo
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