

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GREG PFEIFER and ANDREW DORLEY,

Plaintiffs,

v.

WAWA, INC., RETIREMENT PLANS
COMMITTEE OF WAWA, INC., JARED G.
CULOTTA, MICHAEL J. ECKHARDT,
JAMES MOREY, CATHERINE PULOS,
HOWARD B. STOECKEL, DOROTHY
SWARTZ, RICHARD D. WOOD, JR. and
KEVIN WIGGINS,

Defendants

and

WAWA, INC. EMPLOYEE STOCK
OWNERSHIP PLAN

Nominal Defendant.

Civ. A. No. 2:16-cv-00497-PD

CLASS ACTION SETTLEMENT AGREEMENT

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INTRODUCTION

Subject to approval by the United States District Court for the Eastern District of Pennsylvania, this Class Action Settlement Agreement is made and entered into by and among Plaintiffs Greg Pfeifer and Andrew Dorley and class member and proposed class representative Michael DiLoreto, individually and on behalf of the Class, and Defendants Wawa, Inc., Retirement Plans Committee of Wawa, Inc., Jared G. Culotta, Michael J. Eckhardt, James Morey, Catherine Pulos, Howard B. Stoeckel, Dorothy Swartz, Richard D. Wood, Jr., Kevin Wiggins, and Wawa, Inc. Employee Stock Ownership Plan to settle claims against Defendants, subject to, the terms and conditions below. All capitalized terms will have the meaning ascribed thereto in Section I of this Agreement.

RECITALS

WHEREAS, on February 1, 2016, Greg Pfeifer initiated a class action lawsuit, docketed as Case No. 2:16-cv-00497-PD in the United States District Court for the Eastern District of Pennsylvania, asserting claims on behalf of himself and a purported class of terminated employee-participants of the ESOP for alleged violations of ERISA;

WHEREAS, on April 22, 2016, Greg Pfeifer and Andrew Dorley filed a First Amended Complaint (Dkt. 20) asserting claims on behalf of themselves and a purported class of terminated employee-participants of the ESOP for alleged violations of ERISA;

WHEREAS, on June 14, 2016, Defendants responded to the First Amended Complaint by filing a motion to dismiss (Dkt. 31), which the Court denied by Order dated October 6, 2016 (Dkt. 58);

WHEREAS, on October 20, 2016, Defendants filed a motion for reconsideration as to portions of the Order on the Motion to Dismiss or in the alternative for certification to the Third Circuit (Dkt. 63), which the Court denied by Order dated January 11, 2017 (Dkt. 84);

WHEREAS, on December 13, 2016, the Parties entered into a Stipulation (Dkt. No. 75) regarding the definition of the Class and as to certification of certain issues and claims pursuant to Rule 23;

WHEREAS on December 14, 2016, Plaintiffs filed a motion for class certification to certify the class as defined in the stipulation as to both the claims for which class certification was stipulated and as to claims for which Defendants opposed class certification (Dkt. 77), Defendants filed an opposition on January 11, 2017 (Dkt. 85), Plaintiffs filed a reply on January 25, 2017 (Dkt. 87) and the Court heard oral argument on January 30, 2017;

WHEREAS, Plaintiffs and Defendants conducted arms-length negotiations at two mediations sessions with Michael Young, an experienced mediator with JAMS, reached an oral agreement in principle in May 2017 contingent on funding and agreement by Defendants' insurers, and, after further negotiation of the terms, executed a written Settlement Agreement in Principle on November 1, 2017;

WHEREAS, as part of the discovery and prior to mediation and the execution of the Settlement Agreement in Principle, Defendants provided Co-Lead Class Counsel with certain discovery regarding the facts and claims asserted in the Action;

WHEREAS, Plaintiffs served document subpoenas on third parties and reviewed thousands of pages of documents produced by third parties in the course of discovery in the Action;

WHEREAS, to the best of their knowledge and belief, Defendants and Wawa believe that the information and data provided in discovery in July 2016 regarding the members of the Class and their accounts in the ESOP was materially accurate;

WHEREAS, as of the date of the signing of this Agreement, Class Counsel is not aware of any information suggesting that the data provided by Defendants in discovery regarding the members of the Class and their accounts in the ESOP was materially inaccurate;

WHEREAS, as a result of the factual investigation and legal research conducted by Co-Lead Class Counsel concerning the claims asserted in the Action and discovery, Co-Lead Class Counsel have concluded that terms of this Settlement are fair, reasonable, adequate and in the best interests of both the Class defined in the Amended Complaint and the Plan, and have agreed to settle the Action on the terms set forth herein;

WHEREAS, Defendants deny the material allegations asserted in the Action; deny any wrongdoing or liability whatsoever; and state that they are entering into the Settlement solely to avoid the cost, disruption, and uncertainty of litigation;

WHEREAS, the Parties desire to promptly and fully resolve and settle with finality all of the claims on the terms set forth herein and subject to the approval of the Court;

WHEREAS, each of the undersigned counsel represent that their respective clients have been informed of and consent to the provisions set forth below;

NOW, THEREFORE, the Parties, in consideration of the promises, covenants and agreements herein described, and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, and without any admission or concession as to any matter of fact or law, and intending to be legally bound, do hereby agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the following meanings, unless a section or subsection of this Agreement specifically provides otherwise. Capitalized terms used

in this Agreement, but not defined in this Section I, will have the meaning ascribed to them elsewhere in this Agreement.

A. “2015 Amendment” means the Amendment to the Wawa ESOP adopted on or about August 7, 2015 by which the ESOP accounts of certain Terminated Employee Participants (as defined in the Amendment) who ceased Wawa employment before January 1, 2015, and certain Alternate Payees (as defined in Amendment No. 4) were closed, the stock holdings of their accounts were liquidated and transferred to accounts in the Wawa 401k Plan by default, or, if directed by them, either rolled over into an IRA or another qualified employer retirement plan or distributed directly to them.

B. “Action” means the putative class action pending in this Court styled Greg Pfeifer and Andrew Dorley, on behalf of themselves individually and on behalf of all other similarly situated, v. Wawa, Inc., Retirement Plans Committee of Wawa, Inc., Jared G. Culotta, Michael J. Eckhardt, James Morey, Catherine Pulos, Howard B. Stoeckel, Dorothy Swartz, Richard D. Wood, Jr., Kevin Wiggins, and Wawa, Inc. Employee Stock Ownership Plan, Case No. 2:16-cv-00497-PD.

C. “Agreement In Principle” means the agreement fully executed on November 1, 2017, signed by Co-Lead Class Counsel on behalf of Plaintiffs and the Class and Defense Counsel on behalf of Defendants.

D. “Cash Settlement Amount” means twenty-five million dollars (\$25,000,000.00) paid by or on behalf of Defendants (or their Insurers), other than the Plan, described in Section IV below.

E. “Class” means the Class as stipulated by the Parties in the Stipulation filed on December 13, 2016 (Dkt. No. 75) defined as follows (except as to the Excluded Persons): “All

persons who were Terminated Employee Participants in the ESOP as of January 1, 2015 with account balances greater than \$5,000.00 and the beneficiaries of such participants and any Alternate Payees whose stock in the ESOP was liquidated pursuant to 2015 Amendment (i.e. Plan Amendment No. 4)”

F. “Class Counsel” means Co-Lead Class Counsel as well as Donahoo & Associates, P.C. and Cohen Milstein Sellers & Toll PLLC.

G. “Class Member” means an individual who is a member of the Class. Where applicable, such as with regard to notice and payment provisions of this Settlement Agreement, this term shall apply to either the Terminated Employee Participant, the beneficiaries of such participants, or the Alternate Payee, whomever of which is to receive an allocation of the Cash Settlement Amount.

H. “Class Notice” means the form of notice provided to the Class Members that complies with the requirements of Section III in this Agreement, Rule 23, and as approved by the Court.

I. “Class Representatives” mean Plaintiffs and Michael DiLoreto.

J. “Co-Lead Class Counsel” means R. Joseph Barton of Block & Leviton LLP and Daniel Feinberg of Feinberg Jackson Worthman & Wasow LLP.

K. “Complaint” means the Amended Complaint (Dkt. 20) and any subsequent operative complaints filed in this Action.

L. “Court” means the United States District Court for the Eastern District of Pennsylvania.

M. “Defendants” mean Wawa, Inc., Retirement Plans Committee of Wawa, Inc., Jared G. Culotta, Michael J. Eckhardt, James Morey, Catherine Pulos, Howard B. Stoeckel,

Dorothy Swartz, Richard D. Wood, Jr. and Kevin Wiggins and Nominal Defendant the Wawa, Inc. Employee Stock Ownership and Retirement Plan.

N. “Defendants Related Parties” means Defendants and their respective past, present and future employees, principals, agents, attorneys, accountants, auditors, advisors, directors, officers, shareholders, owners, representatives, predecessors, successors, heirs, executors, administrators, trustees, affiliates, parents, subsidiaries, successors, assigns, and any person acting on their behalf.

O. “Defense Counsel” means Morgan, Lewis & Bockius LLP.

P. “Excluded Persons” means the following persons who are excluded from the Class: (a) the Trustee Defendants (who have been identified as Howard B. Stoeckel and Richard D. Wood, Jr.); (b) the members of the Retirement Plans Committee of Wawa, Inc., (who have been identified as Jared G. Culotta, Michael J. Eckhardt, James Morey, Catherine Pulos, Dorothy Swartz and Kevin Wiggins); (c) the current directors of Defendant Wawa; (d) legal representatives, successors, heirs, and assigns of any such excluded persons; and (e) any person whom the Court determines has properly excluded themselves or should be excluded from the Class.

Q. “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

R. “Escrow Account” an account established by Co-Lead Class Counsel in the name of Wawa, Inc. ESOP Litigation Settlement Fund into which the Cash Settlement Amount is to be paid.

S. “Expense Award” will have the meaning set forth in Section VIII of this Agreement.

T. “Fee Award” will have the meaning set forth in Section VIII of this Agreement.

U. “Final Approval Motion” means the motion to be filed by Co-Lead Class Counsel requesting that the Court grant final approval of the Settlement pursuant to Fed. R. Civ. P. 23(e).

V. “Final Order” means the Order and Final Judgment, substantially in the form of an Order described in Section XI below.

W. “Insurers Related Parties” means Westchester Fire Insurance Company (“Westchester”), Arch Insurance Company (“Arch”), and Zurich American Insurance Company (“Zurich”) (collectively, the “Insurers”), and each Insurer’s respective past, present and future employees, principals, agents, attorneys, accountants, auditors, advisors, directors, officers, shareholders, owners, representatives, predecessors, successors, heirs, executors, administrators, trustees, affiliates, parents, subsidiaries, successors, assigns, insurers, reinsurers and any person acting on their behalf.

X. “Non-Appealable” means an order entered by the Court is no longer subject to appeal, which will occur when: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any extension of time) has expired; or (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom, including any petitions for rehearing or re-argument, petitions for rehearing *en banc*, and petitions for writ of *certiorari* or any other writ, or any other form or review, have been finally disposed of, such that the time to appeal therefrom (including any extension of time) has expired, in a manner resulting in an affirmance of the Final Order.

Y. “Plan of Allocation” means the plan for distribution of the proceeds of the Cash Settlement Amount as proposed by Co-Lead Class Counsel.

Z. “Preliminary Approval Order” means the “Order Preliminarily Approving Settlement, Approving Form of Notice, and Setting Final Approval Hearing” in this Action, substantially in the form described in Section X.

AA. “Plaintiffs” mean Greg Pfeifer and Andrew Dorley.

BB. “Plaintiffs’ Counsel” means Class Counsel.

CC. “Released Parties” means Defendants Related Parties and Insurers Related Parties.

DD. “Service Awards” will have the meaning set forth in Section VIII of this Agreement.

EE. “Settled Class Claims” means the claims that the Class will release pursuant to this Settlement as provided in Section XIV.

FF. “Settlement” means the settlement and compromise of this Action as provided for in this Settlement Agreement.

GG. “Settlement Administrator” means the person whom Defendants and Co-Lead Class Counsel may hire, subject to Court approval, who is to be responsible for, among other things, providing Class Notice to Class Members and/or otherwise assisting with the administration of the Settlement.

HH. “Settlement Agreement” means this Class Action Settlement Agreement and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.

II. “Settlement Fund” means the Cash Settlement Amount plus any earnings and interest thereon, minus any Court-approved deductions and expenses.

JJ. “Settling Parties” or “Parties” means Plaintiffs, on behalf of themselves and the Class and the Defendants.

KK. “Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority, including income tax and other taxes and charges on or regarding franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, *ad valorem*, stamp, transfer, value added or gains taxes; license, registration and documentation fees; and customs’ duties, tariffs, and similar charges.

LL. “Termination Notice” will have the meaning set forth in Section XV of this Settlement Agreement.

MM. “Wawa” means Wawa, Inc.

NN. “Wawa 401k Plan” means the Wawa, Inc. 401(k) Plan

OO. “Wawa ESOP”, “ESOP”, or the “Plan” means the Wawa, Inc. Employee Stock Ownership Plan.

II. CLASS CERTIFICATION

1. **Class Certification Motion.** Plaintiffs will seek to certify the Class defined in Paragraph 1 of the Parties’ Stipulation (ECF No. 75) pursuant to Rule 23(b)(1) and/or (b)(2), but will alternatively seek to certify the Class pursuant to Rule 23(b)(3) only in the event that the Court finds that a particular claim is inappropriate for certification under Rule 23(b)(1) and/or Rule 23(b)(2). Defendants will withdraw their opposition to the pending Motion for Class Certification (ECF No. 77) and file a statement of non-opposition to the proposed Class as a

settlement class; however, Defendants may also file a statement explaining why certification under Rule 23(b)(1) and/or Rule (b)(2) is appropriate.

2. **Parties' Cooperation.** The Parties will cooperate and each use their best reasonable efforts to obtain certification of a mandatory settlement class under Rule 23(b)(1) and/or Rule 23 (b)(2).

3. **Defendants' Non-Opposition.** The Defendants will not object to or oppose final certification of the Class at the Court or on any appeal concerning the approval of this Settlement.

III. CLASS NOTICE

1. **Provision of Class Notice.** Upon the Court's preliminary approval of this Settlement Agreement or by the date specified by the Court, the Settlement Administrator will be responsible for providing Class Notice to the Class Members.

2. **Contents.** The Class Notice will contain a brief description of the claims advanced by the Class, a summary of the terms of the Settlement Agreement, information on the attorneys' fees and costs sought by Co-Lead Class Counsel, describe the proposed Plan of Allocation of the Settlement Fund to the Class, the estimated settlement allocation for the Class Member, and provide information about the Final Approval Hearing, in the form approved by the Court.

3. **Method of Providing Class Notice.** Class Notice will be provided to each individual Class Member: (a) by either electronic notification (if available and approved by the Court) to all Class Members, or, if unavailable or not approved by the Court, by mailing via first class US Mail to all Class Members, and (b) by posting the Class Notice on websites maintained by Co-Lead Class Counsel and the Settlement Administrator. Defendants will cooperate with

Co-Lead Class Counsel to facilitate providing Class Notice and other settlement-related communications by providing any known email addresses and mailing addresses for all Class Members, to the extent such information is reasonably available in the records of Defendants.

4. **Additional Information Provided with the Class Notice.** Along with the Class Notice, every Class Member will be provided with any necessary information or forms to elect a distribution or rollover of his or her the Settlement Fund from his/her Wawa ESOP account or Wawa 401k Plan Account. Any Class Member will be entitled to request and receive the necessary forms to elect a distribution of his or her share of the Settlement Fund.

5. **Settlement Administrator.** Co-Lead Class Counsel and Defendants have preliminarily agreed that Dahl Administration LLC (“Dahl”) may serve as the Settlement Administrator, subject to an appropriate engagement agreement and approval by the Court. Should Dahl not be retained or approved to serve as the Settlement Administrator, Co-Lead Class Counsel and Defendants will attempt to reach agreement about the recommended Settlement Administrator, but in the absence of such agreement, Co-Lead Counsel and Defendants will each propose one settlement administrator and the Court will decide which settlement administrator to appoint. For any settlement administrator chosen or appointed, both Co-Lead Class Counsel and Wawa will be designated as the client. The Parties and their counsel will reasonably cooperate with the Settlement Administrator to facilitate providing Notice and other settlement-related communications and administration.

6. **Undeliverable Notices.** In the event that a Class Notice sent by U.S. Mail is returned as undeliverable, the Settlement Administrator will make reasonable efforts to obtain a valid mailing address and promptly resend the Class Notice to the Class Member by U.S. Mail.

7. **Class Data.** Within 21 days after this Settlement Agreement is executed, Defendants will, to the extent not already disclosed, provide Co-Lead Class Counsel and the Settlement Administrator with the following contact information in electronic form for each previously identified potential Class Member, to the extent such information is reasonably available in Defendants' files: (1) name (2) a street mailing address; (3) telephone number(s); (4) e-mail address(es); (5) Social Security number, (6) sufficient information identifying the beneficiary Class Member (including any persons who has a QDRO) for each participant Class Member, and (7) either the amount of shares held and liquidated in September 2015 or information sufficient to link any newly provided data to previously provided data. Defendants will also provide other information reasonably requested by Co-Lead Class Counsel or the Settlement Administrator.

8. **Class Notice Costs and Expenses.** All costs and expenses for the Settlement Administrator will be paid by Defendants.

9. **Declaration Regarding Class Notice.** Within 30 days after the date on which Notice is required to be sent, the Settlement Administrator will file a declaration with the Court confirming that the Notice and related information was sent in accordance with the Preliminary Approval Order.

IV. SETTLEMENT FUND

1. **Payment of Cash Settlement Amount into Escrow Account.** As settlement of the Class' claims, Defendants (or their Insurers), other than the Wawa ESOP, have paid, will pay, or cause to be paid, the Cash Settlement Amount of twenty-five million dollars (\$25,000,000.00) into the Escrow Account no later than forty-five (45) days from the date on which the Preliminary Approval Order is entered by the Court. If any amount of the Cash

Settlement Amount is not paid into the Escrow Account within the time required by this Paragraph, Defendants (or their Insurers), other than the Wawa ESOP, will pay interest on the overdue amount at 6% per year compounded daily from the date the payment was due until the date that the payment is made.

2. **Defendants' Obligations to Pay.** Defendants will have no obligation to fund any amounts (other than their own attorneys' fees and expenses, settlement administration expenses, the fees associated with the Independent Fiduciary and CAFA notice, and the fees and expenses associated with administration of the ESOP or Wawa 401k Plan associated with the Settlement) in excess of the Cash Settlement Amount, including fees, costs, or service awards incurred or paid by Plaintiffs or Class Counsel, unless expressly stated herein.

3. **Custody of Settlement Fund.** The Settlement Fund held in the Escrow Account will be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court and will be administered in accordance with the terms of this Settlement Agreement and the Orders of the Court. Except as provided herein, the Settlement Fund will not be released from the Escrow Account until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement.

4. **Management of the Settlement Fund.** Until the Final Order becomes Non-Appealable or until the Settlement is terminated in accordance with this Agreement, the Settlement Fund will be held in the Escrow Account established by Co-Lead Class Counsel, for which an Escrow Agent will act pursuant to the terms of the respective Escrow Agreement or as ordered by the Court. After the Final Order becomes Non-Appealable, Co-Lead Class Counsel will have the sole right and duty to manage the Settlement Fund in compliance with the terms of the Final Order. At no time will Defendants have any duty or authority to hold, manage, or invest

any portion of the Settlement Fund prior to the receipt by the Wawa ESOP of any such portion from the Settlement Fund. After receipt of the Settlement Fund by the Wawa ESOP, the Settlement Fund will be held, managed, and invested consistent with this Agreement. Any earnings or interest earned by the Settlement Fund will become part of the Settlement Fund.

5. **Qualified Settlement Fund.** The Settlement Fund is intended by the Settling Parties to be a “qualified settlement fund” for federal income tax purposes under Treas. Reg. § 1.468B-1 at the earliest date possible.

V. **DISTRIBUTIONS FROM THE SETTLEMENT FUND**

1. **Expenses Before the Effective Date.** Until the Final Order becomes Non-Appealable or the Settlement is terminated in accordance with this Agreement, Co-Lead Class Counsel will be authorized to pay from the Settlement Fund (a) any actual or estimated taxes on any income earned on the Settlement Fund and, (b) upon notice to Defendants, all costs and expenses related to the preparation of such tax filings or payments. Any dispute regarding the reasonableness of any expense incurred, paid or owing will be adjudicated by the Court, but in no event will the Settling Parties cause or allow the Settlement Fund to fail to make a tax payment in a timely manner.

2. **Attorneys’ Fees, Expenses/Costs and Service Awards.** Pursuant to any deadline set by the Court, Class Counsel may file any motion with the Court requesting the payment of attorneys’ fees, reimbursement of litigation expenses and costs, and/or service awards to the Class Representatives out of the Settlement Fund. Any amounts awarded by the Court will be paid from the Settlement Fund as directed by Co-Lead Class Counsel before Distribution to the Class.

3. **Tax Reserve After the Effective Date:** Upon the Final Order becoming Non-Appealable, Co-Lead Class Counsel will be authorized to establish a reserve from the Settlement Fund to pay any taxes that are or will be owed (but not yet due) and for expenses related to payment of taxes or filing of tax returns or to the extent that there are other costs of administration of the Settlement not paid by Defendants.

4. **Distribution to the Wawa ESOP Accounts of the Class.** After the Final Order becomes Non-Appealable, the Settlement Fund will be distributed to Class Members pursuant to the Court-approved Plan of Allocation after payment of the following: (a) any Taxes on the income or earnings by the Settlement Fund, any tax-related expenses, and the creation of any reserve for future expenses (as described above); and (b) any expenses incurred in connection with the administration of the Settlement Fund (to the extent that there are any under this Settlement); (c) any award of attorneys' fees, reimbursement of any litigation expenses and costs to Class Counsel, or payment of any Service Award to the Class Representatives. After deduction of the foregoing, the Settlement Fund will be remitted to the Wawa ESOP to be allocated and/or distributed to the Class Members in accordance with the Plan of Allocation, and as directed by the Settlement Administrator.

5. **Distributions of the Settlement from the Wawa ESOP to the Class.**
The Wawa ESOP Plan Administrator will make distributions to Class Members as follows:

(a) For any Class Member who receives an allocation from this Settlement to his/her Wawa ESOP account and who has submitted a distribution election form prior to Final Approval (or at least 30 days before the date on which the Final Order becomes Non-Appealable), the Wawa ESOP Plan Administrator will make a distribution or rollover to that Class Member as directed by the election form within the later of: (i)

30 days of the Final Order becoming Non-Appealable or (ii) thirty (30) days after the Wawa ESOP Plan Administrator has received amounts from the Settlement Fund and a direction from the Settlement Administrator for the allocation of any portion of the net proceeds of the Settlement Fund to any Class Member's Wawa ESOP account.

(b) For Class Members who do not submit a distribution election form at least 30 days before the date on which the Final Order becomes Non-Appealable, their net settlement amount will be transferred to their existing Wawa 401k Plan accounts or if there is no existing Wawa 401k Plan account, such an account will be established within the later (i) 30 days of the Final Order becoming Non-Appealable or (ii) thirty (30) days after the Wawa ESOP Plan Administrator has received amounts from the Settlement Fund and a direction from the Settlement Administrator for the allocation of any portion of the net proceeds of the Settlement Fund.

(c) To make such an election for distribution or rollover from either the Wawa ESOP or the Wawa 401k Plan, a Class Member will need to complete an election form, which will be valid, unless modified by the Class Member, for 180 days after the election is executed by the Class Member. To the extent that a Class Member executes an election more than 180 days prior to the date the distribution date for that Class Member, the Class Member will need to make a new election to receive their distribution or rollover. To the extent that the election form expires prior to the time that the Wawa ESOP Plan Administrator is required to make a distribution of the Settlement Fund under this Agreement, the Wawa ESOP Plan Administrator will send a new election form to the Class Member within 10 days of the expiration date.

(d) Class Members whose allocation from this Settlement is transferred to the Wawa 401k Plan will be permitted to allocate their proceeds from this Settlement into any of the available investment options in the Wawa 401k Plan according to the terms of the Wawa 401k Plan. For any Class Member whose allocation from this Settlement is transferred into the Wawa 401k Plan who does not submit an election form or provide other investment instructions within 60 days after his or her Settlement proceeds are transferred in to the Wawa 401k Plan, the allocation from this Settlement will be invested according to that Class Member's pre-existing investment instructions for contributions in that Class Member's 401k Plan account or, if the Class Member has not provided any previous investment instructions, to the default investment option in the Wawa 401k Plan.

6. Costs and Expenses Related to Administration & Distribution.

Defendants will bear any costs and expenses of administration of the Settlement, including any costs relating to distribution the Settlement, the allocation of the net proceeds of the Settlement Fund to the Class Members' Wawa ESOP accounts and the transfer of any net proceeds of the Settlement Fund to the Class Members' Wawa 401k Plan accounts. The Wawa ESOP and the Wawa 401k Plan will not charge any fees to Class Members for processing a distribution or rollover for six (6) months after the Final Order becomes Non-Appealable to the extent that it consists of a Class Member's allocable share of the net proceeds of the Settlement Fund. To the extent that the Wawa ESOP, the Wawa 401k Plan or some service provider of the Wawa ESOP or the Wawa 401k Plan imposes a charge for distribution of funds to participants in those Plans, the costs of distribution of any portion of the Settlement Fund will be borne by Defendants.

7. **Tax Liability.** The Settling Parties will not have any liability or responsibility for the payment of any Taxes incurred by or with respect to the Settlement Fund, and any such Taxes will be paid out of the Settlement Fund.

VI. PLAN OF ALLOCATION

1. **Proposed Plan of Allocation.** Co-Lead Class Counsel will propose and submit a Plan of Allocation to the Court as to the recommended method of determining and distributing the proceeds of the Settlement Fund (net of attorneys' fees, expenses, and any Service Awards approved by the Court) to members of the Class.

2. **Defendants' Non-Involvement.** Defendants will have no responsibility for preparing or any right to provide input into and will take no position on the Plan of Allocation except to the extent that the Plan of Allocation would result in adverse tax consequences to the Wawa ESOP or the Wawa 401k Plan.

3. **Modification of Plan of Allocation.** In the event that the proposed Plan of Allocation is rejected or modified by the Court or on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement, and will not provide a basis for any party to withdraw from this Settlement Agreement, except that the Plan of Allocation must exclude the Excluded Persons from receiving any distribution or allocation from the Settlement Fund.

4. **Class Members' Right to Demonstrate Membership and/or Submit ESOP Account Data.** Before the Final Approval Hearing and by a deadline to be established by the Court, any person who claims to meet the definition of a Class Member but who has not been identified as a Class Member in the data provided by Defendants will be entitled to demonstrate membership in the Class. Such submissions will only be used (a) to adjust amounts allocated to

Class Members, subject to Court approval, under the Plan of Allocation and/or (b) by Co-Lead Class Counsel to determine whether to exercise Plaintiffs' unilateral right to withdraw from the Settlement as set forth in paragraph XI.4. Any such documentation submitted to the Settlement Administrator will not serve as an administrative claim under the Wawa ESOP, nor will the failure to dispute be construed as a waiver of rights under paragraph XV.3. In the absence of Co-Lead Class Counsel exercising Plaintiffs' right to withdraw, any such documentation submitted to the Settlement Administrator will have no impact on the amount that Defendants are obligated to pay as the Cash Settlement Amount.

5. **Excluded Persons Prohibited From Receiving Settlement Fund.** None of the Excluded Persons will either directly or indirectly through allocations to their Wawa ESOP accounts, receive any of the proceeds from this Settlement. Defendants Jared G. Culotta, Michael J. Eckhardt, James Morey, Catherine Pulos, Howard B. Stoeckel, Dorothy Swartz, Richard D. Wood, Jr., and Kevin Wiggins acknowledge that they will not receive any allocation of any amount from this Settlement and further agree to obtain, if necessary, an authorization from any beneficiary (including a spouse) necessary to forego any such allocation.

6. **No Claim Based on Distribution in Accordance with the Plan of Allocation.** The Class will not have any claim against Plaintiffs, the Wawa ESOP, Defendants, or counsel to any of the foregoing, including any of the individuals involved in the distribution under the Plan of Allocation, based on any distributions of the Settlement Fund made substantially in accordance with this Settlement Agreement or as authorized by the Court.

VII. SETTLEMENT ADMINISTRATION

1. **Appointment of Settlement Administrator.** A Settlement Administrator who will be approved by the Court will be appointed to administer the Settlement and will report

to Co-Lead Class Counsel and the Court. Any Settlement Administrator will have experience providing notice to Class Members in employment or employee benefit class action settlements, and in supervising and administering large and complex settlement funds.

2. **Settlement Administrator's Responsibilities.** The Settlement Administrator will undertake the following tasks to administer this Settlement consistent with the terms of this Settlement, the Plan of Allocation, and the Orders of the Court and such other procedures required by the Court or as jointly directed by Class Counsel and Defense Counsel:

- (a) Print and email and/or mail the Class Notice Packet to the Class Members in accordance with this Settlement Agreement and any order of the Court and undertake to trace and re-mail all undeliverable Notice Packets or other reasonable steps to locate missing Class Members;
- (b) Provide Class Counsel and Defense Counsel with copies of all written objections to the Settlement Agreement, all challenges to Defendants' data, including all information submitted in support of each challenge, and/or any request for exclusions from the Class;
- (c) Provide Counsel for the Settling Parties with copies of any objections to the Settlement (to the extent such objections are not filed with the Court);
- (d) Respond to questions from Class members or refer Class Members to Class Counsel for responses;
- (e) Maintain and staff a toll-free phone number and a web site until at least six
- (6) months after distributions of the Settlement Fund have been made to Class Members' Wawa ESOP accounts;
- (f) File with the Court a declaration confirming compliance with the

procedures approved by the Court for providing notice to the Class;

(g) Determine for purposes of allocation of the Settlement Fund, subject to the approval by the Court, whether Class Members claiming to have sufficiently established that their account data differs than that provided by Defendants and send notice of determinations or adjudications to those persons;

(h) Instruct the Plan Administrator, consistent with instructions from Class Counsel and the court-approved Plan of Allocation, as to how the Cash Settlement Amount is allocated between the Class and to the Wawa ESOP accounts of individual Class Members;

(i) Monitor the Qualified Settlement Fund and file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitations the returns described in Treas. Reg. Section 1.468B-2(k));

(j) Pay the Net Settlement Amount to the Wawa ESOP, consistent with instructions from Class Counsel and the court-approved Plan of Allocation; and

(k) Any other responsibilities set forth in this Agreement; and any other responsibilities agreed to by the Settling Parties related to administration of the Settlement and consistent with the orders of the Court or any other responsibilities ordered by the Court.

3. **Plan Administrator.** The Wawa ESOP Plan Administrator will be responsible for allocating the settlement payments to the Class Members' Wawa ESOP accounts and/or distributing the settlement payments to the Class Members or making rollovers as directed by Class Members through the Wawa ESOP and/or transferring the settlement payments to the Class Members' Wawa 401k Plan accounts. The Wawa ESOP Plan Administrator will comply

with the instructions by Class Counsel about the amounts to allocate to Class Members and neither Defendants nor the Wawa ESOP Plan Administrator will have any input as to how the Cash Settlement Amount is allocated among Class Members.

4. **Administration Costs.** Defendants will bear all administration costs of implementing the Settlement, including costs related to providing Class Notice or for the Independent Fiduciary and the reasonable costs of a Settlement Administrator (determined reasonable by agreement of the Parties or the Court), as well any steps necessary to ensure the continued tax-qualification of the Wawa ESOP. No part of the Settlement Fund will be used to pay for or reimburse any costs incurred by Wawa (or its affiliates) or the Wawa ESOP related to administration of this Settlement. In the event that the Settlement is not approved or approval is reversed on appeal, no portion of such costs will be reimbursable to Defendants, Wawa, or the Wawa ESOP by Plaintiffs, the Class, or Co-Lead Class Counsel.

5. **Prohibition on Assessment of Expenses to the Class.** The accounts of the Class Members in the Wawa ESOP or the Wawa 401k Plan will not be charged or assessed any amount by Defendants (or their service providers) for any of the following: (1) payment of the Cash Settlement Amount, (2) expenses related to administration or implementation of this Settlement, or (3) expenses incurred in allocating or distributing any amounts paid into the Wawa ESOP, the Wawa 401k Plan or to the Class Members (or according to their distribution elections).

6. **Tax Treatment of the Wawa Plans.** Defendants will use their best efforts to ensure that the Settlement will not adversely affect the tax-qualified status of the Wawa ESOP or the Wawa 401k Plan. Defendants will be responsible for all costs associated with any steps

that they undertake to ensure the continued tax qualification of the Wawa ESOP or the Wawa 401k Plan with respect to the Settlement.

VIII. PAYMENT OF FEES, SERVICE AWARDS, AND REIMBURSEMENT OF COSTS AND EXPENSES

1. **Attorneys' Fees & Expenses From the Settlement Fund.** Co-Lead Class Counsel will be entitled to file a motion on behalf of Plaintiffs' Counsel seeking an award of attorneys' fees and reimbursement of expenses and costs from the Settlement Fund. Prior to the deadline for Class Members to object to the Settlement Agreement, Co-Lead Class Counsel will file a motion with the Court for an award from the Settlement Fund of: (a) attorney's fees (the "Fee Award"), (b) service awards for Plaintiffs ("Service Awards"), and (c) reimbursement of litigation costs and expenses (the "Expense Award"). Any Fee Award, Expense Award or Service Award will be paid solely from the Settlement Fund and is subject to the Court's approval at the Final Approval Hearing.

2. **Defendants' Non-Opposition.** Defendants and their counsel will take no position regarding the application for or an award of the Fee Award, the Service Awards, or the Expense Award, provided that the application for the Fee Award does not exceed 20% of the Cash Settlement Amount, the reimbursement for litigation costs and expenses does not exceed \$150,000.00, and the requested Service Awards do not exceed \$25,000.00 for each Class Representative.

3. **Payment of Fees/Expenses to Co-Lead Class Counsel.** All amounts to be paid pursuant to this Section will be paid into an account designated by Co-Lead Class Counsel to be distributed as directed by Co-Lead Class Counsel. Neither Defendants nor their Insurers will have any input as to the division of such fees and expenses among Plaintiffs' Counsel.

4. **Timing of Payment of Attorneys' Fees and Reimbursement of Expenses.** In the event that this Court grants any request for attorneys' fees, reimbursement of expenses or a Service Award as part of or at the same time as Final Judgment, disbursement of such payments may be made only upon the Final Order becoming Non-Appealable. In the event that there is no appeal of the Final Judgment of the Settlement, but an appeal solely of an award of attorneys' fees, reimbursement of expenses or any service award, Co-Lead Class Counsel will be entitled to a disbursement from the Settlement Fund of such amount of attorneys' fees and/or such amount of expenses/costs as to which there is no appeal.

5. **Non-Materiality of Award of Attorneys' Fees, Reimbursement of Expenses or Service Award to Settlement.** In the event that this Court refuses to award attorneys' fees, allow reimbursement of expenses/costs or permit a service award, in whole or in part, or any such award is rejected or modified on appeal, such rejection or modification will not constitute a material modification of this Settlement Agreement, will not void this Settlement Agreement and will not provide a basis for any party to withdraw from this Settlement Agreement.

6. **Defendants' Attorneys' Fees & Expenses.** Defendants and/or their Insurers will bear their own attorneys' fees, expenses and costs. No amount of the attorneys' fees, expenses, or costs of this Litigation incurred by Defendants or the administration of this Settlement incurred by Wawa, the Wawa ESOP, the Wawa 401k Plan or service providers thereto will be paid by, or charged to, any amounts paid in this Settlement or, directly or indirectly, to the Wawa ESOP account or the Wawa 401k account of any Class Member.

IX. NO ADMISSION OF WRONGDOING

1. This Settlement Agreement embodies a compromise of disputed claims and nothing in the Settlement Agreement will be interpreted or deemed to constitute any finding of wrongdoing by Defendants or give rise to any inference of liability in this or any other proceeding. This Settlement Agreement will not be offered or received against Defendants as any admission by any such party with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation or of any liability, negligence, fault, or wrongdoing of any such party.

2. Neither this Settlement Agreement nor the Agreement in Principle is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Claims asserted by Plaintiffs and Class Members.

3. This Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement or the Final Order, and any Party may file this Settlement Agreement and/or the Final Order in any action that may be brought against it or any of the Released Parties to support a claim, a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim, or in any action that may be brought to enforce any claim assigned pursuant to this Settlement Agreement. Defendants may use and disclose this Settlement Agreement in connection with any proceeding involving any of their insurers or any governmental agency with respect to the Wawa ESOP.

X. PRELIMINARY APPROVAL ORDER

1. **Preliminary Approval Order.** Co-Lead Class Counsel, on behalf of the Class, will move the Court to enter the Preliminary Approval Order (“Preliminary Approval

Motion”). The Preliminary Approval Motion will seek an Order in a form agreed upon by the Settling Parties which will provide for, among other things:

- (a) Certification of the Class for settlement purposes only pursuant to Fed. R. Civ. P. 23(b)(1) or (b)(2);
- (b) Preliminary Approval of the Settlement as set forth in this Settlement Agreement, subject to further hearing and determination under Fed. R. Civ. P. 23(e);
- (c) Approval of the form of Class Notice, substantially in the form agreed-upon by the parties, and the manner of distribution and publication which is consistent with this Agreement, Rule 23 and the requirements of due process;
- (d) Appoint the Settlement Administrator;
- (e) Set deadlines by which all objections to the Settlement must be made, any exclusions (if any) must be made, or any submissions to the Settlement Administrator regarding their ESOP account data must be made;
- (f) Schedule a hearing date at least one-hundred (100) days from the date on which the Preliminary Approval Order is filed for the Court to determine whether the Settlement Agreement should be finally approved as fair, reasonable and adequate, and whether an Order finally approving the Settlement Agreement should be entered (“Final Approval Hearing”);
- (g) Provide that no objection to the Settlement Agreement will be heard and no papers submitted in support of said objection will be received and considered by the Court at the Final Approval Hearing unless the objection and reasons therefore, along with copies of any supporting papers, are filed with the

Clerk of the Court and served on the Parties within forty-five (45) days of the publication and/or distribution of the Class Notice;

(h) Provide that the Final Approval Hearing may be continued from time to time by Order of the Court if necessary, and without further notice to the Class;

(i) Provide a deadline for filing of a Final Approval Motion and for Co-Lead Class Counsel's application for Fee Award, Service Awards, and Expense Award;

(j) Require Defendants to produce the Class Data required pursuant to Section III.7 of this Agreement; and

(k) Approval of the form of notice under the Class Action Fairness Act of 2005 ("CAFA"), which the Court determines complies with the requirements of CAFA and which, upon mailing, will discharge Defendants' obligations pursuant to CAFA.

2. **Final Approval of the Settlement.** If the Court preliminarily approves this Settlement, and if Co-Lead Class Counsel has not exercised its right to withdraw pursuant to paragraph XI.4, Co-Lead Class Counsel will file a Final Approval Motion. Defendants will either join in or not oppose the Final Approval Motion. The Final Approval Motion will seek entry of a proposed Final Order in a form to be agreed-upon by the Settling Parties and will, among other things:

(a) Order Final Approval of the Settlement set forth in this Settlement Agreement;

- (b) Adjudge that the Settlement is fair, reasonable and adequate to the Class pursuant to Rule 23(e);
- (c) Dismiss the Action against Defendants with prejudice;
- (d) Adjudge that Plaintiffs and the Class will be deemed conclusively to have released and waived any and all Settled Claims against the Released Parties as provided in this Settlement Agreement;
- (e) Bar and permanently enjoin Plaintiffs and the Class from prosecuting any and all Settled Claims, as provided in this Settlement Agreement, against the Released Parties;
- (f) Determine Co-Lead Class Counsel's request(s) for Fee Award, Service Awards, and Expense Award;
- (g) Retain exclusive jurisdiction, without affecting the finality of the Order entered, with regard to: (i) implementation of this Settlement Agreement; (ii) disposition of the Settlement Fund; and (iii) enforcement and administration of this Settlement Agreement, including the release provisions thereof; and
- (h) Find that notice to the appropriate state and federal officials has been provided as required by CAFA and that Defendants have satisfied their obligations pursuant to 28 U.S.C. § 1715.

XI. CONDITIONS OF SETTLEMENT

1. **Court Approval.** Each of the following is an express condition of Settlement: (a) the Court certifies this Action as a class action pursuant to Fed. R Civ. P. 23 on behalf of the Class substantially similar to those defined in this Agreement; (b) the Court enters a

Preliminary Approval Order substantially in the form as required by this Agreement; (c) the Court enters the Final Order, substantially in the form as required by this Agreement.

2. **Effect of Court Modification of the Class Definition.** In the event that the Court does not certify a Class substantially similar to the definition set forth in this Settlement Agreement, Co-Lead Class Counsel and Defendants will each have the right to void this Settlement so long as notice of the exercise of such right is provided to the Court and the opposing Party within 14 days after the date on which the Court enters the order establishing the non-conforming Class definition.

3. **Effect of Certification under Rule 23 With Opt-Out Rights.** In the event the Court certifies the Class under Rule 23 in such a way that permits persons who otherwise would be included in the Class to exclude themselves, Defendants will have the unilateral right to withdraw from the Settlement and resume the litigation only if more than 5% of either the aggregate Class Members submit valid and timely requests to be excluded or 5% of the shares allocated to the Class Members' ESOP accounts submit valid and timely request to be excluded from the Class. To exercise the right of withdrawal under this paragraph, Defense Counsel must notify Co-Lead Class Counsel in writing no later than fourteen (14) days after the Opt-Out deadline. The writing contemplated in this paragraph must be sent via e-mail to Co-Lead Class Counsel at the e-mail addresses listed under their names and signatures on this Agreement.

4. **Material Correctness of Defendants' Class Information.** A condition of this Settlement is that the information and data about the Class that Defendants provided to Co-Lead Class Counsel in July 2016 -- specifically that the information and data includes at least all members of the Classes and the account information and account activity -- is materially correct.

In the event that the data provided by Defendants about the Class increases the number of Class Members or the number of shares allocated to Class Members' ESOP accounts is inaccurate by more than 5% of the totals (in number of Class Members or shares) compared to the Class data produced to Co-Lead Class Counsel in July, 2016, the data will be considered not materially correct and Co-Lead Class Counsel will have the unilateral right up to (7) days prior to the Final Approval Hearing (which will be at least thirty (30) days after the deadline for Class Members to submit their ESOP account data to the Settlement Administrator) to withdraw from Settlement and resume the litigation. To exercise the right of withdrawal under this paragraph, Co-Lead Class Counsel must notify Defense Counsel in writing via mail or at the e-mail addresses listed under their names and signatures on this Agreement. This Agreement in no way affects the rights and remedies which the Parties may have under state or federal law outside the scope of this Agreement.

5. **Non-Conditional Matters.** Court approval of the Fee Award, Service Awards, Expense Award, or the Plan of Allocation are not conditions of the Settlement. No action by the Court or any courts of appeal related to the Fee Award, the Service Awards, the Expense Award, or the Plan of Allocation will prevent the Final Order allowing the approval of the Settlement from becoming Non-Appealable.

XII. INDEPENDENT FIDUCIARY

Defendants, at their own expense, will hire an Independent Fiduciary to approve the Settlement consistent with Prohibited Transaction Exemption 2003-39. Within twenty-one (21) days after the Court enters a Preliminary Approval Order, the Independent Fiduciary will issue its final opinion. If at any point, the Independent Fiduciary issues an opinion that does not approve all aspects of this Settlement Agreement, Defendants or Co-Lead Counsel will have the

right, but not the obligation, to withdraw from the Settlement Agreement so long as such right is exercised within seven (7) days of receipt of the Independent Fiduciary's opinion. If either party exercises such right under this provision, then the entire Settlement Agreement will be void and the parties will revert to their respective positions in the Litigation as of May 8, 2017.

XIII. ISSUANCE OF NOTICE UNDER THE CLASS ACTION FAIRNESS ACT

1. **CAFA Notice.** Pursuant to CAFA, Defendants, at their own expense, will prepare and provide the CAFA Notice, including the notices to the United States Department of Justice, the United States Department of Labor, and to the Attorney Generals of all states in which the Class Members reside, as specified by 28 U.S.C. § 1715, within ten (10) days of the execution of this Settlement Agreement.

2. **CAFA Notice Provided to Class Counsel.** Defendants will provide Co-Lead Class Counsel with a copy of the CAFA Notice and materials that the Defendants sent to the Appropriate Officials within three (3) business days after such notices have been sent. The CAFA Notice and materials will be provided automatically and without further request by Co-Lead Class Counsel.

XIV. RELEASES

Upon the Final Order becoming Non-Appealable, and provided that each Party has performed all of the respective obligations under this Settlement Agreement to be performed on or prior to such date by such Party:

1. **Release of the Released Parties by the Class.** The Class Members (including their heirs, executors, administrators, successors, and assigns), solely in their capacity as participants in the Wawa ESOP or as beneficiaries of Class Members who are participants in the ESOP, fully and finally release the Released Parties from any and all actual or potential

claims, actions, causes of action, suits, contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, rights, obligations, judgments or demands whatsoever, in law or in equity, whether known or unknown, now existing or hereafter arising, whether contingent or liquidated, whether contractual, extra-contractual, in tort or otherwise, of every kind, nature and description that the Class Members had, have, or may have in the future against the Released Parties, in whole or in part, based upon, arising from, related to, attributable to, in consequence of, or in any way involving:

- a) the Action;
- b) any claim, known or unknown, that the Class has or could have asserted against the Defendants related to or arising out of the adoption or implementation of the 2015 Amendment, including but not limited to:
 - (1) claims relating to the adoption of the 2015 Amendment,
 - (2) claims relating to the valuation of the ESOP's Wawa stock in connection with the 2015 termination of Class members' participation in the ESOP, and
 - (3) claims relating to implementation of the 2015 Amendment, including distributions from the ESOP in September 2015 as part of implementing the 2015 Amendment,but not including any individual participant's or beneficiary's claim based only on (1) errors unrelated to the allegations in the Amended Complaint; (2) regarding that participant's salary, age, or years of service; (3) claims that cannot be released by law; or (4) other circumstances unrelated to the

2015 Amendment or the 2015 termination of Class members' participation in the ESOP;

c) any claim for misrepresentation, fraud, indemnity, contribution, breach of contract, breach of any oral or written promise or breach of any duty grounded in law or in contract, negligence, "bad faith," violation of any statute or regulation, or damages of any kind whatsoever based upon, arising out of, attributable to or relating to the Action;

except claims to enforce this Agreement.

2. **Release of Plaintiffs and the Class by Defendants.** Defendants and their Insurers shall be deemed to have, and by operation of the Final Order shall have fully, finally, and forever released, relinquished and discharged Plaintiffs, each Class Member, and Class Counsel from any and claims, actions, causes of action, suits, contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, rights, obligations, judgments or demands whatsoever, in law or in equity, whether known or unknown, now existing or hereafter arising, whether contingent or liquidated, whether contractual, extra-contractual, in tort or otherwise, of every kind, nature and description that Defendants or their Insurers had, have, or may have in the future against Plaintiffs, each Class Member or Class Counsel that could have been asserted in this Action related to the filing of this Action including any claims for attorneys' fees, costs, expenses or sanctions, that relate to the filing, commencement, prosecution or settlement of this Action whether such Claim arises under ERISA or any federal law, state law, foreign law, common law doctrine, rule, regulation or otherwise. The Wawa ESOP, and its fiduciaries on behalf of the Wawa ESOP, shall have fully, finally, and forever released, relinquished and discharged the Class as to any claims related to challenging the correctness of any distribution or

allocation in any of the Class Members' Wawa ESOP accounts that are subject to this Settlement.

3. **Non-Released Claims.** Notwithstanding the foregoing or any other language in this Settlement Agreement, the Settling Parties are not releasing Claims to enforce this Settlement Agreement or Claims concerning the validity of this Settlement Agreement (including any representations upon which the Settlement was based).

XV. EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION

1. **Termination Notice.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or approval of the Settlement is reversed on appeal or materially altered, either Co-Lead Class Counsel or Defendants may void this Settlement by providing written notice to counsel for all other Parties to the Settlement within fourteen days (14) days after the event prompting the right to terminate ("Termination Notice"). In the event that one of the conditions of this Settlement set forth in Section XI is not met and the Final Order has not become Non-Appealable, the Party in Section XI entitled to withdraw based on this condition may void the Settlement within the time period specified in Section XI.

2. **Effectiveness of Termination Notice.** The Termination Notice will become effective to void the Settlement Agreement only if and after the Settling Parties have failed to reach a written agreement within thirty (30) days of the event triggering the Termination Notice to modify this Settlement Agreement to resolve the issue.

3. **Effect of Withdrawal.** In the event that the Court refuses to grant Preliminary Approval or enter the Final Approval Order, or such approval is reversed on appeal and one of the Settling Parties exercises its right to withdraw from the Settlement Agreement

within the time specified above, or any other circumstance which causes the Final Order to not become Non-Appealable and the Parties have not entered into a written modification of the Settlement Agreement within thirty (30) days of such occurrence: (a) the monies in the Escrow Account (including any interest or earnings accrued while in Escrow, but less any amount paid or owing for taxes or other expenses incurred by Co-Lead Class Counsel or the Settlement Administrator while in Escrow in connection with administering the Settlement Agreement, including any amounts necessary to prepare tax returns or monies paid or owing to the Settlement Administrator) will be returned to each payor, pro rata according to the amount of its/his respective payment(s) into the Settlement Fund upon written request within ten (10) business days of such written request; (b) the Settling Parties will not be released from the claims asserted in this Litigation; (c) both this Agreement and the Agreement in Principle will be void *ab initio*; and (d) the Parties' positions, rights and responsibilities will be deemed to have reverted to their respective status in this Action as of May 8, 2017, and, except as may otherwise be expressly provided herein, the Settling Parties will proceed in all respects as if this Settlement Agreement and the Agreement in Principle never existed.

XVI. MISCELLANEOUS PROVISIONS

1. **Return of Confidential Information.** Within the later of 90 days of the Final Order becoming Non-Appealable or the Net Settlement Fund being paid to Wawa ESOP for distribution to the Class Members, any Party or counsel who has received any confidential materials (excluding attorney work product, expert reports, and any materials filed with the Court), will either return such materials to counsel for the party who produced the confidential materials or destroy them as provided in the Stipulated Protective Order (Dkt. No. 29). However, Counsel for any Party may retain (1) archival copies of pleadings, motion papers,

deposition transcripts and exhibits, court transcripts, and exhibits, and (2) any documents protected by the attorney-client privilege or work-product doctrine (including Confidential Material referred to or attached to any such document). Additionally, Co-Lead Class Counsel may maintain the Class Data and Valuations provided in discovery for nine (9) months after the date of Distributions of the Settlement from the Wawa ESOP to the Class, but such materials will remain subject to the terms of the Stipulated Protective Order.

2. **Joint Press Release.** In response to any media, news, press, or other third party inquiries, the Parties will provide only a mutually-agreed upon press release. The Parties will not issue any press release regarding the Settlement other than the aforementioned press release, which will only be provided in response to such inquiries. Other than the mutually-agreed press release or communications jointly approved by the Parties or the Court, the Parties and their Counsel will not initiate any communications designed to publicize the Settlement in the media to third parties other than Class Members. Nothing in this Agreement will prevent Class Counsel from posting public documents filed with the Court, the mutually-agreed press release, or other public information related to the litigation or settlement on a website in order to provide information about to Class Members, or will otherwise limit Class Counsels' communication with Class Members, or limit or restrict Class Counsel's right to practice as required by the Rules of Professional Responsibility (including, but not limited to, as interpreted by D.C. Ethics Opinion 335, California Rules of Professional Conduct Rule 1-500, or similar opinions by another State Bar).

3. **Tax Advice Not Provided.** No opinion or advice concerning the Tax consequences of the Settlement Agreement has been given or will be given by counsel involved in the Action to the Class, nor is any representation or warranty in this regard made by virtue of

this Settlement Agreement. The Tax obligations of the Class and the determination thereof are the sole responsibility of each Class Member, and it is understood that the Tax consequences may vary depending on the particular circumstances of each Class Member.

4. **Binding Effect.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, affiliates, heirs and legal representatives of the Settling Parties and Released Parties, provided, however, that no assignment by any Settling Party will operate to relieve such party of its obligations hereunder.

5. **Good Faith.** The Settling Parties: (a) acknowledge that it is their intent to consummate this Settlement; (b) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Settlement Agreement; and (c) agree to exercise their best efforts and to act in good faith to cooperate to the extent necessary to obtain the fullest possible participation of all Class Members in any Settlement. The Settling Parties and their counsel agree to cooperate fully with one another in seeking entry of the Preliminary Approval Order and final approval of the Settlement. The Settling Parties also agree to promptly execute and/or provide such documentation as may be reasonably required to obtain preliminary and final approval of this Settlement.

6. **Exhibits.** Any exhibits attached hereto and identified herein are hereby incorporated by reference as though fully set forth herein.

7. **Modification.** This Settlement Agreement may be amended or modified only by written instrument signed by Co-Lead Counsel on behalf of Plaintiffs and the Class and by Defense Counsel on behalf of Defendants or their respective successors in interest.

8. **Representations.** This Settlement Agreement constitutes the entire agreement among the Settling Parties, and no representations, warranties or inducements have

been made to any party concerning this Settlement Agreement or the Agreement in Principle, other than the representations, warranties, and covenants contained and memorialized in such documents. In the event of any conflicts between this Settlement Agreement, the Agreement in Principle, or any other document, the Settling Parties agree that this Settlement Agreement will control.

9. **Authorization.** Each signatory to this Settlement Agreement represents that he or she is authorized to enter into this Settlement Agreement on behalf of the respective parties he or she represents.

10. **Counterparts.** This Settlement Agreement may be executed in one or more original, photocopied, or facsimile counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument.

11. **Governing Law.** All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of Pennsylvania without regard to its rules of conflicts of law and in accordance with the laws of the United States.

12. **Headings.** The headings in this Settlement Agreement are used for purposes of convenience and ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Settlement Agreement in any way.

13. **Waiver.** The waiver by one party of any breach of this Settlement Agreement by any other party will not be deemed a waiver of any other breach of this Settlement Agreement. The provisions of this Settlement Agreement may not be waived except by a writing signed by the affected party, or counsel for that party, or orally on the record in court proceedings.

14. **Continuing Jurisdiction.** The Settling Parties agree to submit to the jurisdiction of the Court and will be bound by the terms of this Settlement Agreement, including, without limitation, disputes related to implementing and enforcing the Settlement embodied in this Settlement Agreement. Any and all disputes related to claims that are not satisfactorily resolved by the Settling Parties will be submitted to the Court for final resolution. The Final Order will provide that the Court will have continuing jurisdiction over this Settlement.

15. **Enforcement of this Agreement.** In the event that any Party to this Agreement believes that another Party to this Agreement has breached the terms of this Agreement, that Party will notify the alleged breaching Party and Counsel in writing setting forth the nature of the breach and the requested method to cure the breach at least 14 days prior to filing any litigation to enforce the terms of the Settlement Agreement (and if the allegedly breaching party is a Class Member regardless of whether that Class Member has separate counsel, Defendants must also notify Co-Lead Class Counsel in writing). In the event that the allegedly breaching Party fails to cure the alleged breach as set forth in the written notification after 14 days, the other Party may then file an action to enforce the Settlement Agreement. A Party who achieves some success on the merits in demonstrating a breach occurred, could have been reasonably cured within 14 days (or another time set forth in the written notification) and was not cured within that time, will be entitled to attorneys' fees and expenses consistent with the standards of ERISA § 502(g)(1).

16. **No Party Is the Drafter.** The Settlement Agreement is deemed to have been drafted by all Settling Parties hereto, as a result of arm's-length negotiations among the Settling Parties. Whereas all Settling Parties have contributed substantially and materially to this Settlement Agreement, it will not be construed more strictly against one party than another.

17. **Extensions.** The Settling Parties reserve the right, subject to the Court's approval, to request any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

18. **Evidentiary Effect.** Neither this Settlement Agreement nor the Settlement, nor any negotiation, nor act performed, nor document executed, nor proceedings held pursuant to or in forbearance of this Settlement Agreement or the Settlement, even if this Settlement Agreement is cancelled or terminated: (a) is, or may be deemed to be, or may be used as an admission of, or evidence of the validity of any Settled Claims, or of any wrongdoing, negligence, misrepresentation, violation or liability of any Settling Party; (b) is, or may be deemed to be, or may be used as an admission of, or evidence of any infirmity in the Complaint or Claims asserted by the Class; or (c) is, may be deemed to be, or may be used as an admission of, or evidence of, any fault or omission of any Settling Party in any civil, criminal or administrative proceeding in any court, administrative agency, or tribunal, including in this Action. However, this Settlement Agreement may be used in such proceedings as may be necessary to consummate or enforce this Settlement Agreement, the Settlement, or the Final Order; and any Settling Party may file this Settlement Agreement and/or the Final Order in any action to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

19. **Final and Complete Resolution.** The Settling Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to this Action. The Settlement compromises claims which are contested and will not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling

Parties agree that the amount paid to the Settlement Fund and the other terms of the Settlement Agreement were negotiated in good faith at arm's-length by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

20. **Duplicative Provisions.** In interpreting this Settlement Agreement, duplicative and/or overlapping release provisions will not be presumed or construed to be intended to release separate claims or have different meanings. Neither prior versions of this Settlement Agreement or the Agreement in Principle, nor the negotiating history of these terms will be used to aid in any interpretation or construction of those terms.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby have caused this Settlement Agreement to be executed by them or their duly authorized counsel, on the dates set forth below.

[Signature page follows]

FOR PLAINTIFFS, CLASS REPRESENTATIVES AND ON BEHALF OF THE CLASS

Dated: December 29, 2017



R. Joseph Barton (*pro hac vice*)

BLOCK & LEVITON LLP

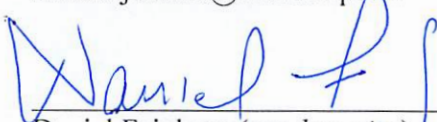
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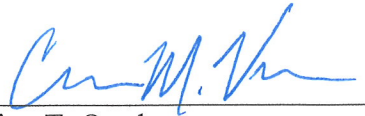
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