

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



In the Matter of Potomac Foods Company-II, Inc.

SETTLEMENT AGREEMENT

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“the District”), and Respondent Potomac Foods Company-II, Inc. (“Respondent” or the “Company”), hereby enter into this Settlement Agreement, and agree as follows:

I. THE PARTIES

1. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. The Attorney General is also charged with enforcing violations of the District of Columbia’s Wage Payment & Collection Law (“WPCL”), D.C. Code § 32-1301, *et seq.*, and Minimum Wage Revision Act (“MWRA”), D.C. Code § 32–1001, *et seq.*

2. Respondent is a company that controlled and operated a Burger King restaurant franchise, which was located at 4422 Connecticut Ave NW, Washington, DC 20008.

II. COVERED CONDUCT

3. In February 2023, the District commenced an investigation into Respondent for allegedly violating the wage-hour laws of the District of Columbia, including by failing to

promptly pay its employees their final paycheck in December 2022 upon the closure of its restaurant in violation of the WPCL, and by failing to pay overtime to non-exempt employees from 2020 to 2022 in violation of the WPCL and MWRA. The alleged conduct referenced in the preceding sentence shall be referred to as the “Covered Conduct.”

4. Respondent denies each allegation summarized in the preceding paragraph.

III. DEFINITIONS

5. “Effective Date” shall be the last date upon which any party executes the Settlement Agreement.

6. “Eligible Employee” means any former Company employee listed in Appendix A.

7. “Claims Deadline” means the last day upon which Eligible Employees are permitted to submit the Notice/Release Form, as described below, to the Company.

IV. PAYMENT TERMS

8. **Payments to Eligible Employees.** Respondent shall make a total payment of \$24,020.76 to Eligible Employees, pursuant to each Eligible Employee’s individual proportionate share (the “Worker Share”), less any federal, state, or local withholding taxes. Amounts owed to Eligible Employees and their Worker Shares are itemized in **Appendix A**. Respondent shall be responsible for payment distribution and will manage the distribution as follows:

- a. *Distribution of Notice and Release of Claims Form.* Within 30 days after the Effective Date (“Distribution Period”), the Company shall use commercially reasonable efforts to send to all Eligible Employees a Notice and Release of Claims Form (the “Notice/Release Form”) (sample attached as **Appendix B**). The Company shall make at least two (2) attempts within the Distribution Period to contact all Eligible Employees by phone, text, or email, or by other reasonable means if the Company determines it does not have a suitable phone, text, or email for an Eligible Employee, and provide the Eligible Employees with the Notice/Release Form. The Notice/Release Form provides Eligible Employees with a summary of this settlement and provides Eligible Employees an opportunity to opt in or opt out of receiving their Worker Share under this Settlement Agreement in exchange for agreeing to release the Company from

claims the Eligible Employee may have arising out of the Covered Conduct. Eligible Employees shall have 60 days from the date the Company sends the Notice/Release Form to opt in of receiving a payment under this Settlement Agreement by returning the Notice/Release Form to the Company, as described in the Notice/Release Form. The last day of the aforementioned 60-day period shall be referred to as the “Claims Deadline.” The Notice/Release form signed by the Eligible Employee must be received by the Company no later than the Claims Deadline or the Eligible Employee will be deemed to have opted out. The Company, in its discretion, may choose to accept any opt-ins that it receives after the Claims Deadline.

- b. *Distribution of payments.* Within 60 days after the Claims Deadline, the Company will distribute payments by check or direct deposit to each Eligible Employee who has executed and delivered to the Company a Notice/Release Form.
- c. *Records and Reporting.* The Company shall maintain a “Claims Ledger” that documents (a) to the extent reasonably possible, each Eligible Employee contact information and contact attempts made by the Company, (b) whether Eligible Employees have opted in or opted out to receive payments, and (c) payments made to and cashed by Eligible Employees. Within 90 days after the Claims Deadline, the Company will produce the Claims Ledger to the District and copies of executed Notice/Release Forms.
- d. *Undistributed Funds.* The term “Undistributed Funds” refers to the sum of amounts in Appendix A either (i) due to Eligible Employees who neither opted in or out or (ii) due to Eligible Employees who opted in but did not deposit their payment within 90 days of the date of payment. Respondent shall notify the District of the amount of Undistributed Funds and make a payment to the District in the amount of the Undistributed Funds by September 15, 2024. Payments made to the District pursuant to this term may be used for any lawful purpose, including, but not limited to: deposit to the District’s litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. Respondent agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District’s payment under this paragraph.

9. **Payments to the District.** Respondent shall pay a civil penalty of \$22,500 to the District within 90 days of the Effective Date. Payments to the District shall be made out to “D.C. Treasurer” and mailed or delivered by other commercially reasonable means to D.C. Office of the Attorney General, Attn: Diego Pereira, 400 6th Street NW, 10th Floor, Washington, D.C. 20001.

V. INJUNCTIVE TERMS

10. Respondent shall implement and maintain policies at any future District location(s) to ensure compliance with the District's wage-and-hour laws, including the District's overtime laws and requirements, and the Company will notify all its District employees of these policies.

11. If Respondent maintains a location within the District of Columbia in calendar years 2024 or 2025, Respondent will submit an annual report to the District for calendar years 2024 and 2025, as applicable, consisting of a list of all District employees (if any), their job titles, hours worked, and wages paid, and this report should include a signed certification attesting to the Company's compliance with the District's wage-and-hour law. Respondent shall submit the annual report by February 28 of the following year by the means outlined in Paragraph 16.

VI. RELEASE

12. In exchange for the performance of the Respondent's obligations under this Settlement Agreement, and upon the completion of all Respondent's payments required under the Agreement, the District hereby releases the Company, its parents, subsidiaries, and affiliates, and each of their officers, directors, employees, agents, and representatives, from any and all civil claims, liabilities, penalties, interest, or payments of any kind that the Attorney General asserted or could have asserted under the D.C. wage and hour laws, including D.C. Code § 32-1301, *et seq.* and D.C. Code § 32-1001, *et seq.* for actions arising out of the Covered Conduct.

VII. ADDITIONAL TERMS

13. This Settlement Agreement shall be considered effective and fully executed on the Effective Date. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as

originals of those signature pages.

14. Respondent shall not knowingly permit third parties authorized by the Respondent to act on its behalf to engage in practices that would be violative of this Settlement Agreement.

15. This Settlement Agreement represents the full and complete terms of the settlement entered by the Parties. In any action undertaken by the Parties, neither prior versions of this Settlement Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

16. All notices sent pursuant to this Settlement Agreement shall be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001
Graham.Lake@dc.gov

Counsel for the District of Columbia

David E. Constine III
Troutman Pepper
Troutman Pepper Building
1001 Haxall Point, 15th Floor
Richmond, VA 23219
david.constine@troutman.com

Counsel for Respondent

17. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance

of any and all of the provisions of this Settlement Agreement.

18. This Settlement Agreement represents the entire agreement of the parties and supersedes all prior or contemporaneous agreements, either written or oral. If any clause, provision, or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

19. Respondent shall provide a copy of this Settlement Agreement to each of its current and future principals, officers, directors, and managers having decision-making authority with respect to the subject matter of this Settlement Agreement.

20. Respondent shall not form a separate entity or corporation for the purpose of engaging in acts or practices in whole or in part that are prohibited in this Settlement Agreement.

For the District of Columbia:

BRIAN L. SCHWALB
Attorney General for the District of Columbia

Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Date: _____

For Respondent:

Signed: _____
Name: _____
Title: _____

Date: _____