FIDUCIARY COUNSELORS

Report of the Independent Fiduciary for the Settlement in *Lloyd, et al. v. Argent Trust Company, et al.*

July 10, 2026

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I. Introduction

Fiduciary Counselors has been appointed as an independent fiduciary for the W BBQ Holdings, Inc. Employee Stock Ownership Plan (the "Plan" or the "ESOP"), in connection with the settlement (the "Settlement") reached in *Lloyd, et al. v. Argent Trust Company, et al.*, Case No. 1:22-cv-04129-DLC-SDA (the "Litigation" or "Action"), which was brought in the United States District Court for the Southern District of New York (the "Court"). Fiduciary Counselors has reviewed over 150 previous settlements involving ERISA plans.

II. Executive Summary of Conclusions

After a review of key pleadings, decisions and orders, selected other materials and interviews with counsel for the parties, Fiduciary Counselors has determined that:

- The Court has certified the Litigation as a class action during the Litigation and has certified an identical Settlement Class in connection with preliminary approval, and in any event, there is a genuine controversy involving the Plan.
- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption ("PTE") 76-1.
- All terms of the Settlement are specifically described in the written settlement agreement.
- To the extent there is non-cash consideration, it is in the interest of the Plan's participants and beneficiaries, and the Plan is receiving no assets other than cash in the Settlement.

Based on these determinations about the Settlement, Fiduciary Counselors hereby approves and authorizes the Settlement on behalf of the Plan in accordance with PTE 2003-39.

III. Procedure

Fiduciary Counselors reviewed key documents, including the motion to compel arbitration, and in the alternative, to dismiss for lack of standing, and related papers, the Court's order denying the motion, the Second Circuit's summary affirmance, the Second Amended Complaint, the Motion for Class Certification and related papers, the Court's Order Granting Class Certification, the parties mediation briefs, the Settlement Agreement, the Notice, the Motion for Preliminary Approval and related papers, the Court's Order Preliminarily Approving the Settlement, and Plaintiffs' Motion for Attorneys' Fees, Litigation Expenses, Settlement Administration Expenses, and Service Awards and related papers. In order to help assess the strengths and weaknesses of the claims and defenses in the Litigation, as well as the process leading to the Settlement, the members of the Fiduciary Counselors Litigation Committee conducted separate telephone interviews with counsel for Defendants and counsel for Plaintiffs.

IV. Background

A. Procedural History of Case

***Litigation*.**

Plaintiff Jamaal Lloyd filed the Action on May 20, 2022, and Plaintiff Anastasia Jenkins was added as a party in the First Amended Complaint (together, "Plaintiffs"). Plaintiffs alleged that the ESOP trustee, Argent Trust Company ("Argent"), and the Company's controlling managers and shareholders, Herbert Wetanson, Gregor Wetanson, and Stuart Wetanson (the "Seller Defendants"), caused the Plan to engage in prohibited transactions and breached their fiduciary duties in connection with the sale of the company to the ESOP for an inflated purchase price that far exceeded its fair market value (the "ESOP Transaction"), and by arranging for continued payments to the Seller Defendants in connection with the sale. Pursuant to the terms of the ESOP Transaction, the ESOP acquired 400,000 shares of W BBQ common stock from the Seller Defendants in or around July 2016 (80% of the shares then outstanding) for an aggregate price of $98,887,309. This amount allegedly was over six million dollars higher than the purchase price that was originally negotiated ($92,000,000) for the same number of shares and vastly exceeded the fair market value of those shares.

On October 3, 2022, Defendants Argent, Herbert Wetanson, Gregor Wetanson, Stuart Wetanson, the BBQ Trust and its trustees (the "BBQ Trust"), and the Gregor Wetanson 2015 Gift Trust and its trustees (the "Greg Wetanson Gift Trust") (collectively, "Defendants") filed a motion to compel arbitration, and in the alternative, to dismiss for lack of standing. The Court denied that motion, and Defendants filed a notice of appeal on December 9, 2022. Although the Court initially denied a stay pending appeal, it later granted Defendants' renewed motion to stay in light of the Supreme Court's decision in *Coinbase, Inc. v. Bielksi*, 599 U.S. 736 (2023). On January 27, 2025, the Second Circuit summarily affirmed the Court's decision without merits briefing and issued its mandate. Following remand, the case proceeded in discovery.

Separately, on December 19, 2024— more than two years after the Action was filed— the Secretary of Labor initiated an ERISA enforcement action against Defendants

Argent, Herbert Wetanson, and Gregor Wetanson. *Chavez-Deremer v. Argent Tr. Co.*, No. 1:24-cv-09809-DLC (S.D.N.Y. Dec. 20, 2024), ("the DOL Action"). Defendants moved to consolidate the two actions, but Plaintiffs opposed the motion, and the Court denied consolidation.

On July 10, 2025, the Court granted Plaintiffs' opposed motion to amend the complaint to add the BBQ Trust and Greg Wetanson Gift Trust as Defendants for claims related to transfers of Seller Notes[1] to them. Plaintiffs filed the Second Amended Complaint on July 14, 2025.

On February 17, 2026, the Court entered a consent order and judgment resolving the DOL Action ("DOL Judgment"). The DOL Judgment requires defendants to contribute $1 million to the ESOP over an 18-month period, with those funds solely allocated to the ESOP Accounts of participants who worked 1,000 hours and were actively employed at year-end 2026 or 2027.[2] The DOL Judgment also provided for a $14 million reduction in the principal on the Seller Notes, thereby increasing the value of the W BBQ stock owned by ESOP participants who did not cash out shares on/before December 31, 2025. The DOL Judgment did not contain any liquidity provisions.

On July 18, 2025, Plaintiffs moved for class certification, which Defendants opposed largely based on Class Counsel's purported inadequacy. On October 31, 2025, the Court granted Plaintiffs' motion and certified the requested class under Rule 23(b)(1)(B).

The case then proceeded through intensive pretrial preparation. Plaintiffs successfully opposed Defendants' motion to amend their Request for Admission ("RFA") and Defendants' request to present direct testimony of their fact and expert witnesses in-person at trial. On January 23, 2026, Plaintiffs submitted their pretrial materials, including: the proposed joint pretrial order (which included witness lists, exhibit lists, stipulated facts, and deposition designations), trial affidavits of Plaintiffs' witnesses, trial exhibits, a trial brief, proposed findings of fact and conclusions of law, a *Daubert* motion against one of Defendants' experts, and a motion *in limine* to permit Rule 32(a) deposition designations. Plaintiffs then opposed Defendants' *Daubert* motions against both of Plaintiffs' experts, opposed Defendants' three-part motion *in limine*, and responded to Defendants' trial brief. By the time of settlement, Class Counsel had prepared their witnesses— including the two Plaintiffs and their expert witnesses—for live cross-examination at trial and were prepared to cross-examine Defendants' twelve trial witnesses. Class Counsel had also completed substantial trial logistics and strategy preparations, including the opening statement and trial presentation

[1] "Seller Notes" means the Refinanced (External) Company Note dated December 21, 2017. The principal on the Seller Notes that W BBQ owes to Herbert Wetanson, Gregor Wetanson, and Stuart Wetanson was approximately $71,440,114.42 prior to the reduction of $14,000,000 in principal in connection with the DOL Judgment entered on February 17, 2026.

[2] The cash payment in the DOL Judgment does not benefit all Class Members, but rather, only benefits a minority of ESOP participants who are current employees at year-end 2026 or 2027.

arrangements. In the period immediately preceding trial, Defendants filed a Rule 12(b)(1) motion, and separately, a motion for leave to file a summary judgment motion, arguing that the DOL Judgment "mooted" Plaintiffs' claims. Plaintiffs opposed both motions while finalizing trial preparations. The parties filed their Notice of Settlement before the Court ruled on these motions.

Discovery.

Plaintiffs conducted extensive fact and expert discovery and developed a comprehensive evidentiary record. Plaintiffs served 25 interrogatories on Argent, 32 interrogatories on the Wetanson Defendants, 63 requests for production ("RFPs") on Argent, 64 RFPs on the Wetanson Defendants, 72 RFAs on Argent, and 143 RFAs on the Wetanson Defendants. Plaintiffs also served document subpoenas on six third parties and obtained over 49,160 documents spanning over 317,000 pages. Class Counsel led the questioning in 14 of the 16 fact depositions and participated in two depositions where the U.S. Department of Labor ("DOL") led the questioning. Plaintiffs also negotiated three important fact discovery stipulations. The parties engaged in substantial meet-and-confer efforts to resolve discovery disputes, successfully resolving several without court intervention. Because certain disputes could not be resolved, Plaintiffs filed seven discovery disputes and Defendants filed two. Fact discovery closed on August 29, 2025.

Expert discovery was likewise robust. Defendants disclosed two affirmative expert witnesses and one rebuttal expert witness. Plaintiffs disclosed two affirmative expert witnesses. Class Counsel took the lead on the depositions of all three defense experts and defended the depositions of their two experts.

***Settlement and Preliminary Approval*.**

The Settlement is the result of extensive, arm's-length negotiations conducted with the assistance of the Honorable Stewart D. Aaron. The parties participated in three formal settlement conferences on September 30, 2025, January 29, 2026, and February 13, 2026. Those settlement conferences did not result in resolution. Less than two weeks before trial, and with the involvement of Judge Aaron, the parties exchanged additional settlement offers. These negotiations culminated in an agreement in principle on March 9, 2026, memorialized in an executed term sheet. Thereafter, the parties engaged in further negotiations to finalize the detailed terms of the Settlement Agreement, including the Plan of Allocation. Those negotiations were hotly contested and required further involvement by Judge Aaron as contemplated by the Term Sheet. The parties ultimately entered into the Settlement Agreement dated April 8, 2026.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on April 17, 2026. The Court granted Plaintiff's motion on May 4, 2026. The Court's Order: (1) preliminarily approved the Settlement; (2) certified a Settlement Class identical to the class previously certified; (3) approved the form and method of class notice; (4) set

July 24, 2026 as the deadline for objections; and (5) set August 14, 2026 as the date for a Fairness Hearing.

Objections.

July 24, 2026 is the deadline for Class Members to file objections to the Settlement. As of the date of this report, no Class Members have filed any objections.

V. Settlement

A. Settlement Consideration

The Settlement provides for a Cash Payment of $10,000,000. After deducting any Court-approved (a) attorneys' fees and expenses; (b) service awards; and (c) administrative costs, the remainder (known as the Net Settlement Fund or the Net Cash Payment) will be distributed to Class Members in accordance with the Plan of Allocation.

The Settlement also requires that, within twenty-one (21) days after the Final Settlement Date, the Seller Defendants shall cause the accrued interest on the Seller Notes to be reduced by a total of $9,700,000 (the "Accrued Interest Reduction"). Second, Defendants agree to reduce the principal balance on the Seller Notes by $12,000,000 (the "Principal Reduction"). This is separate from and in addition to the $14,000,000 total principal reduction on the Seller Notes set forth in the DOL Judgment. The principal balance on the Seller Notes, after both reductions, shall be approximately $45,440,114.42. Within thirty (30) Days after the Final Settlement Date, the Seller Defendants shall certify to Class Counsel that the Accrued Interest Reduction and the Principal Reduction have been effectuated. Within thirty (30) days of its issuance and final approval by the Plan's trustee, Defendants will provide Class Counsel with a copy of the annual valuation of W BBQ stock as of December 31, 2026. The copy may be redacted to show only the elimination of accrued interest, the reduction on the principal balance of Seller Notes (from both this Settlement and the DOL Judgment), and the cancellation of the warrants from the DOL Judgment. Third, within twenty-one (21) days after the Final Settlement Date, the terms of the Plan Document will be amended to provide that: (1) any Class Member whose employment terminated on or before the Final Settlement Date (for reasons other than attainment of a Retirement Date or death while an Employee) will receive distribution of their vested ESOP Account in five equal annual installments, with the first installment to be made during the calendar year following the Final Settlement Date; and (2) any Class Member who is a current employee as of the Final Settlement Date and whose employment terminates during the calendar year following the Final Settlement Date (for reasons other than attainment of a Retirement Date or death while an Employee), who has a vested ESOP Account worth less than $5,000 as of December 31, 2025, will receive distribution of their vested ESOP Account in five equal annual installments, with the first installment to be made during the calendar year following their termination of employment (the "Liquidity Provisions"). The amendments to the Plan

Document described will remain in place at least until the five equal payments have been completed for Class Members who terminated employment on or before one year following the Final Settlement Date.

B. Settlement Class

The Settlement defines the Settlement Class as follows:

> All participants in the W BBQ Holdings, Inc. Employee Stock Ownership Plan on or after July 29, 2016 who vested in whole or in part under the terms of the ESOP, and those participants' beneficiaries. Excluded from the class are Defendants and their immediate family members, any fiduciary of the ESOP, and any current or former officers or directors of W BBQ.

C. The Release

The Settlement defines Released Claims as follows:

> all Claims arising from the facts alleged in any of the complaints that Plaintiffs filed in the Lawsuit, or that were or could have been brought in the Lawsuit based on the same factual predicate as the Claims alleged in any of the complaints that Plaintiffs filed in the Lawsuit (the "Released Claims"), except for Claims to enforce the Settlement, including the terms set forth in Sections 6.1 to 6.6 of the Settlement Agreement (Settlement Consideration).
>
> Plaintiffs, on their own behalf and on behalf of all members of the Class and the Plan, expressly discharge, release, relinquish, and waive, any and all benefits and rights they now have, or in the future may have, conferred upon them by the provisions of Section 1542 of the California Civil Code and all similar provisions of the statutory or common law of any other State, Territory, or other jurisdiction relating to the release of unknown Released Claims. Section 1542 reads in pertinent part:
>
> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The terms of the release, including the provision for the Independent Fiduciary to provide a release of claims by the Plan, are reasonable.

D. The Plan of Allocation[3]

The Net Settlement Amount[4] shall be distributed to Class Members as follows:

a. For those Class Members who had vested W BBQ shares redeemed from their ESOP Accounts ("Cashed-Out Shares") based on a share price as of 12/31/2025 or earlier, the Settlement Administrator shall first set aside from the Net Cash Payment $24.70 for each Cashed-Out-Share. This amount is intended to balance their total recovery per share with the recovery of Class Members who continue to hold vested W BBQ shares in their ESOP accounts after 12/31/2025, who will receive value though an increase in share value for all shares in their account due to the loan and accrued interest reductions described in the Settlement Agreement and reflected in the 12/31/2026 stock valuation. Class Members who separate from employment within a year of the Final Settlement Date will be able to cash out their vested shares at an increased share price through five equal installments.

b. Each Class Member's share of the remaining Net Cash Payment (after deducting the amount set aside for Cashed-Out-Shares under paragraph (a) above) shall be based on their *pro rata* share of the remaining Net Cash Payment based on the sum of the number of vested shares of W BBQ stock allocated to the Class Member's ESOP Account in each year from the Plan Year ended December 31, 2016 through the Plan Year ended December 31, 2025, divided by the sum total of all such vested shares of W BBQ stock allocated to the ESOP Accounts of all Class Members for the same Plan Years. The resulting ratio shall constitute that Class Member's "Settlement Percentage." The Class Member's share of the remaining Net Cash Payment shall be calculated by multiplying the total value of the remaining Net Cash Payment (after setting aside the amounts for Cashed-Out-Shares described in paragraph (a) above) by his or her Settlement Percentage.

c. Within seven (7) days after the allocation of the $600,000 in payments under the DOL Judgment made in 2026 is finalized, or by March 15, 2027 at the latest, W BBQ will provide to the Settlement Administrator a spreadsheet containing the dollar amount allocated to each Class Member ("Offset").

[3] Defendants disagreed that the Plan of Allocation should include an offset for amounts that will be allocated under the DOL Judgment (discussed in paragraphs c and d below and in footnote 6). As required under the Term Sheet, the Parties presented this dispute to Judge Aaron. After reviewing the parties' letter briefs on the offset issue, Judge Aaron selected Plaintiffs' Plan of Allocation (with the offset provisions) for inclusion in the Settlement Agreement. In addition, Judge Aaron directed the parties to submit their competing versions of the Plan of Allocation on the public record with their arguments in support thereof, and to inform the Court of Judge Aaron's resolution. He also directed the parties to advise the Court that, during its fairness review of the Settlement, the Court may wish to solicit DOL's views, since certain beneficiaries of the DOL Judgment will be adversely affected by the Plan of Allocation that he chose. After further consideration, Defendants informed the Court by letter that they no longer oppose Plaintiffs' proposed plan of allocation and therefore do not intend to file any response to Plaintiffs' motion for preliminary approval. Additionally, Class Counsel told us the Court had given DOL an opportunity to submit a position on the offset issue and DOL did not provide one by the Court's deadline.

[4] The Net Cash Payment to be allocated and distributed to Class Members in accordance with the Plan of Allocation is intended to be treated as a "restorative payment" within the meaning of Revenue Ruling 2002-45.

d. Each Class Member's *pro rata* share from the Net Settlement Fund (as set forth in paragraph (b) above) shall be reduced by his/her Offset (calculated in paragraph (c) above).

e. All Offsets shall be totaled and then re-allocated to all Class Members based on their Settlement Percentage discussed in paragraph (b) above ("Re-allocation").

f. Each Class Member's individual recovery from the Net Cash Payment will be equal his/her payment for any Cashed-Out-Shares, plus his/her *pro rata* share of the remaining Net Cash Payment less any Offset, plus any Re-allocation. For the avoidance of doubt, individual Class Members affected by paragraphs (c)-(d) will always receive payment for their Cashed-Out-Shares plus any Re-allocation payment.

The Settlement Administrator shall calculate and provide to Class Counsel for approval each Class Member's individual recovery from the Net Cash Payment within 30 days of the full funding of the $10,000,000 Cash Payment or receiving all Class Data for Allocation, whichever is later. Within fourteen (14) days of approval by Class Counsel, the Settlement Administrator shall distribute each Class Member' recovery from the Net Cash Payment via check or direct rollover if the Class Member submitted a completed timely rollover form (before the Objection deadline set by the Court) and the rollover form was accepted by the Settlement Administrator.

Class Members will have one hundred twenty (120) days after the date their checks are mailed to cash their checks ("Check Expiration Date"). For all Class Members who no longer have an active ESOP account and who have not cashed their check after 90 days, the Settlement Administrator will send an email or mailed correspondence reminding them to cash their check before the Check Expiration Date and that their check will not be valid after that date. For all other Class Members who fail to cash his/her check, the Settlement Administrator shall transmit his/her individual recovery from the Net Cash Payment to the ESOP within forty-five (45) days of the Check Expiration Date. The amount of each Class Member's un-cashed check shall be allocated to his/her individual Employer Contribution Account and invested in the Fidelity Money Market Fund.

In the event that any Class Member no longer has an Employer Contribution Account, then such recoveries from the uncashed checks of all Class Members who no longer have an Employer Contribution Account shall be distributed on a *pro rata* basis to all Class Members who have an Employer Contribution Account and will be invested in the Fidelity Money Market Fund (or comparable investment option). All deposits of Class Members' recoveries from Net Settlement Payments shall be recognized by the Plan as 100% vested and denoted in the recordkeeper's files as a restorative payment from the *Lloyd* Settlement.

We find the Plan of Allocation to be reasonable, including:

1. the allocation of $24.70 per-share to compensate those Class Members who redeemed shares before 2026 for the value they would have received via the increased stock price had they continued to hold their shares, ensuring that Class Members are treated equitably;[5]

2. the distribution of the remainder of the Net Settlement Fund on a *pro rata* basis based on each Class Member's share of vested W BBQ stock over the relevant period (described above);

3. the provision that includes an offset mechanism that reduces recoveries by the amounts the Class Member received from the 2026 payments under the DOL Judgment[6];

4. the provisions that cash payments will be distributed to Class Members either by check or rollover to a qualified retirement account (where timely requested); and

5. the provision that if Class Members who have not cashed their checks no longer have ESOP accounts, their uncashed recoveries will be distributed on a *pro rata* basis to all Class Members with active accounts.

The provisions are cost-effective and fair to Class Members in terms of both calculation and distribution.

E. Attorneys' Fees, Litigation Expenses and Service Awards

Class Counsel seek an award of attorneys' fees in the amount of $6,200,000, representing 27.6% of the Settlement's total economic value.[7] Class Counsel's lodestar was $7,000,332 (exclusive of future work) through April 17, 2026, which would result in a lodestar multiplier of 0.89 if the requested $6,200,000 were awarded. In our experience, the most common award in similar cases nationwide is one-third of the settlement amount. In light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier, Fiduciary Counselors finds the requested attorneys' fees to be reasonable.

[5] The value of $24.70 per share was derived by taking (1) the value of the Interest Elimination ($9.7 million), and the Principal Reduction ($2.8 million value for the face value reduction of $12 million, as explained later) and (2) dividing this value by the total number of shares allocated to participants and beneficiaries.

[6] Because Defendants' payments—made pursuant to the DOL Judgment—stretch over 18 months, they will not conclude until 2027 and will not be fully allocated to participant accounts until sometime in 2028. These payments could not be addressed in the Plan of Allocation. However, by the end of 2026, Defendants will have paid $600,000 into the ESOP, which will be allocated to participants by March 15, 2027, and the Plan of Allocation takes into account these payments.

[7] Plaintiffs' valuation expert calculated the Settlement's total economic value at $22.5 million. As discussed later, this reflects a substantial discount on the face value of the Principal Reduction. This value does not include value from the Liquidity Provisions.

Class Counsel also seek reimbursement of $727,406.93 in expenses including experts ($598,248.75), court reporter, transcript, and video fees ($37,408.62), legal research ($27,581.49), document database ($24,748.74), travel ($18,181.49) and process server fees ($9,025.21). After reviewing additional information regarding the work of Plaintiffs' experts, Fiduciary Counselors finds the request for expenses to be reasonable.

Class Counsel seek service awards of $10,000 for each Class Representative, Mr. Lloyd and Ms. Jenkins, for a total of $20,000. The Class Representatives reviewed pleadings and other case materials, gathered and produced documents, responded to written discovery, communicated with Class Counsel, attended settlement conferences, prepared sworn trial testimony, reviewed settlement proposals, and prepared to testify at trial. Fiduciary Counselors finds the requested service awards to be reasonable.

In sum, although the Court ultimately will decide what attorneys' fees, expenses and service awards to approve, we find that the requested amounts are reasonable under ERISA.

VI. PTE 2003-39 Determination

As required by PTE 2003-39, Fiduciary Counselors has determined that:

- **The Court has certified the Litigation as a class action during the Litigation and has certified an identical Settlement Class in connection with preliminary approval.** Thus, the requirement of a determination by counsel regarding the existence of a genuine controversy does not apply. Nevertheless, we have determined that there is a genuine controversy involving the Plan. Based on the documents we reviewed and our calls with counsel, we find that there is a genuine controversy involving the Plan within the meaning of the Department of Labor Class Exemption, which the Settlement will resolve.

- **The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.** The Plaintiffs alleged that in 2016, the Defendants violated ERISA in connection with the sale of the Dallas BBQ restaurant chain—which was incorporated as W BBQ Holdings, Inc.—to the ESOP at an inflated price, the ESOP Transaction. The Class Representatives alleged that the Wetanson Defendants (the original owners of the Dallas BBQ stock) and Argent Trust Company (which served as the trustee to the ESOP for the ESOP Transaction) breached their fiduciary duties to the ESOP and that the Board of Directors failed to properly monitor Argent and knew of each other's breaches in violation of ERISA. They also alleged that Gregor and Herbert Wetanson unlawfully gifted their proceeds from the ESOP Transaction to Wetanson-related trusts: the Gregor Wetanson 2015 Gift Trust and the BBQ Trust. Defendants denied that they violated any law or duty owed to the ESOP or its participants. Among other defenses, Defendants argued that the sale of Dallas BBQ to the ESOP was for fair market value and that the ESOP and its participants were not harmed by the ESOP Transaction.

In absence of a settlement, Plaintiffs would have faced risks at multiple stages, including trial, appeal, and collection of any judgment in their favor. See *In re WorldCom, Inc. ERISA Litig*., 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (noting that there is a "general risk inherent in litigating complex claims such as these to their conclusion"), order clarified sub nom. *In re Worldcom, Inc. ERISA Litig*., 2004 WL 2922083 (S.D.N.Y. Dec. 17, 2004); *In re PaineWebber Ltd. P'ships Litig*., 171 F.R.D. 104, 126 (S.D.N.Y.) ("Litigation inherently involves risks."), aff'd sub nom. *In re PaineWebber Inc. Ltd. P'ships Litig.*, 117 F.3d 721 (2d Cir. 1997). Success at trial and on appeal, as well as the collection of any affirmed judgment, were far from guaranteed. First, while Class Counsel said that they were confident that they would prevail at trial, courts have frequently found in favor of defendants in similar ERISA cases following trial. See, e.g., *Gamache v. Hogue*, 2026 WL 867506 (M.D. Ga. Mar. 30, 2026) (finding in favor of defendants after bench trial in ESOP case); *Fish v. Greatbanc Tr. Co*., 2016 WL 5923448 (N.D. Ill. Sept. 1, 2016) (finding in favor of defendants after 34-day trial in ESOP representative action). Second, even if Plaintiffs established liability, issues regarding proof of loss would have remained. Courts have recognized that calculating losses in ERISA fiduciary cases is often complex and uncertain. *Sacerdote v. New York Univ*., 328 F. Supp. 3d 273, 280 (S.D.N.Y. 2018) (finding that "while there were deficiencies in the Committee's [fiduciary] processes . . . plaintiffs have not proven that … the Plans suffered losses as a result"), aff'd, 9 F.4th 95 (2d Cir. 2021). Defendants would likely have asserted that Plaintiffs could not demonstrate a loss to the ESOP. That complexity was heightened here by the existence of the DOL Judgment, which would have raised additional issues regarding losses and the proper offset for the DOL Judgment. See *Abbott v. Lockheed Martin Corp*., 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015) (noting that ERISA cases such as this are "particularly complex"); *Koerner v. Copenhaver*, 2014 WL 5544051, at *4 (C.D. Ill. Nov. 3, 2014) ("The facts giving rise to Plaintiffs' claims are complicated, require the elucidation of experts, and are far from certain."). Third, any judgment would be subject to appeal, introducing further delay and risk of reversal. See, e.g., *Wit v. United Behav. Health*, 79 F.4th 1068, 1088 (9th Cir. 2023) (reversing district court's decision that defendant breached its fiduciary duty in violation of ERISA); *PA Chiropractic Ass'n v. Indep. Hosp. Indem. Plan, Inc*., 802 F.3d 926 (7th Cir. 2015) (reversing trial judgment in favor of ERISA plaintiff). Even successful plaintiffs frequently face multi-year delays before obtaining a final, non-appealable recovery. See, e.g., *Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (affirming district court's decision nearly four years later where defendant appealed the award of attorneys' fees and other aspects of the order against him); *Brundle v. Wilmington Tr. N.A.*, 241 F. Supp. 3d 610 (E.D. Va. 2017) (finding that trustee defendant breached its fiduciary duty after bench trial), aff'd, 919 F.3d 763 (4th Cir. 2019), as amended (Mar. 22, 2019), and aff'd, 919 F.3d 763 (4th Cir. 2019) (affirming district court decision nearly two years later), as amended (Mar. 22, 2019). Fourth, regardless of Plaintiffs' success at trial or on appeal, they faced potential risks associated with collection of any judgment in their favor. Collectability challenges have borne out in other ERISA cases, including those litigated by Class Counsel, where defendants transferred their assets to family members, making it difficult for plaintiffs to collect multi-million-dollar judgments. See, e.g., *Severstal Wheeling, Inc. Ret. Comm. v. WPN Corp*., 119 F. Supp. 3d 240 (S.D.N.Y. 2015) (awarding a judgment in favor of plaintiffs after bench trial where court found defendants breached their fiduciary duties and caused loss to the plan), aff'd sub nom. *Severstal Wheeling, Inc. v. WPN Corp*., 659 F. App'x 24 (2d Cir. 2016) & Joint Status Report, *Severstal Wheeling v. WPN Corp*., No. 1:10-cv-00954 (S.D.N.Y. July 31, 2019), (describing extensive efforts by plaintiffs to collect on judgment, including by propounding additional discovery on defendants); *Chesemore v. All. Holdings, Inc.*, 2014 WL 4415919, at *12 (W.D. Wis. Sept. 5, 2014) (entering judgment in favor of plaintiffs against defendant), aff'd sub nom. 829 F.3d 803 & Am. Compl., *Chesemore v. Fenkell*, No. 3:18-cv-00724 (W.D. Wis. Nov. 2, 2020) (explaining plaintiffs' efforts to enforce the judgment have been frustrated by defendant's transfer of assets and property to his wife).

Plaintiffs' valuation expert, Daniel Van Vleet, opined that the ESOP suffered approximately $36 million in economic damages. Plaintiffs' valuation expert also valued the DOL Judgment at approximately $4.3 million, meaning the estimated unrecovered loss to the ESOP was approximately $31.7 million at the time of the Settlement.

Plaintiffs estimated that the Settlement delivers more than $22.5 million in economic value through cash ($10 million), the Interest Elimination ($9.7 million), and the Principal Reduction ($12 million). Class Counsel argued that the Interest Elimination is worth its face value ($9.7 million) because the accrued interest is a current liability for W BBQ that is immediately payable to the Seller Defendants. Class Counsel believed the $12 million Principal Reduction has a present value of approximately $2.8 million because the value of this long-term debt has significantly depreciated since the ESOP Transaction. And, while Plaintiffs do not assign a monetary value to the Liquidity Provisions, Class Counsel argue they provide significant additional economic value to Class Members.

The magnitude of recovery here—approximately 71% of remaining losses—compares favorably to approved ERISA settlements in this District, which frequently recover between 20% to 30% of estimated losses. See, e.g., *Kohari v. MetLife Grp., Inc*., 2025 WL 100898, at *10 (S.D.N.Y. Jan. 15, 2025) (19−27% of total losses "is well within the range found to be fair and reasonable"); Memorandum, *Krohnengold v. N.Y. Life Ins. Co.*, No. 1:21-cv-01778 (S.D.N.Y. Feb. 26, 2024), approved by Order (S.D.N.Y. July 18, 2024), (ERISA settlement represented between 20−25% of total losses); Memorandum of Law, *Jacobs v. Verizon Commc'ns, Inc*., No. 1:16-cv-01082 (S.D.N.Y. July 7, 2023), (settlement represented approximately 13−29.2% of losses), approved by Final Approval Order (S.D.N.Y. Nov. 21, 2023), Memorandum of Law, *Bhatia v. McKinsey & Co., Inc*., No. 1:19-cv- 01466 (S.D.N.Y. Feb. 3, 2021), (settlement represented 21−22% of disputed fees paid to McKinsey affiliate), approved by Order (S.D.N.Y. Feb. 17, 2021), see also *Foster v. Adams & Assocs., Inc*., 2021 WL 4924849, at *6 (N.D. Cal. Oct. 21, 2021) (ESOP case where court approved settlement representing 28.5% of maximum loss).

Given the substantial expense and risk involved in further litigation, the difficulty in prevailing on the merits and establishing damages, and the delay that would have resulted in providing any relief to the Class if the matter had been prolonged through trial and appeal, the amount of the Settlement is reasonable.

Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees and expenses, the service awards to the Class Representatives and the Plan of Allocation.

- **The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.** As indicated in the finding above, Fiduciary Counselors determined that Class Counsel obtained a favorable agreement from Defendants in light of the challenges in proving the underlying claims. The agreement also was reached after arm's-length negotiations supervised by mediator Honorable Stewart D. Aaron.

- **The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.** Fiduciary Counselors found no indication the Settlement is part of any broader agreement between Defendants and the Plan.

- **The transaction is not described in PTE 76-1.** The Settlement did not relate to delinquent employer contributions to multiple employer plans and multiple employer collectively bargained plans, the subject of PTE 76-1.

- **All terms of the Settlement are specifically described in the written settlement agreement and the plan of allocation.**

- **To the extent there is non-cash consideration, it is in the interest of the Plan's participants and beneficiaries, and the Plan is receiving no assets other than cash in the Settlement.** The Settlement includes non-cash consideration described in Section V.A. above and as specifically described in the Settlement. The total value to participants exceeds what could have been recovered in an all-cash settlement, and including the non-cash consideration is in the interest of Plan's participants and beneficiaries. The non-cash consideration does not include non-cash assets, so the requirements related to non-cash assets do not apply.

- **Acknowledgement of fiduciary status.** Fiduciary Counselors has acknowledged in its engagement that it is a fiduciary with respect to the settlement of the Litigation on behalf of the Plan.

- **Recordkeeping**. Fiduciary Counselors will keep records related to this decision and make them available for inspection by the Plan's participants and beneficiaries as required by PTE 2003-39.

- **Fiduciary Counselors' independence**. Fiduciary Counselors has no relationship to, or interest in, any of the parties involved in the litigation, other than the Plan, that might affect the exercise of our best judgment as a fiduciary.

Based on these determinations about the Settlement, Fiduciary Counselors (i) authorizes the Settlement in accordance with PTE 2003-39; and (ii) gives a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan. Fiduciary Counselors also has determined not to object to any aspect of the Settlement.

Sincerely,

Stephen Caflisch
Senior Vice President & General Counsel