

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
KEVIN R. CAISSIE, Individually and	)	
On behalf of all other persons similarly situated	)	
	)	
<i>Plaintiff,</i>	)	
	)	DOCKET NO. 08-CV-30220-MAP
v.	)	
	)	
BJ’S WHOLESALE CLUB, INC.	)	
	)	
<i>Defendant.</i>	)	
_____	)	

**SETTLEMENT AGREEMENT, RELEASE, & WAIVER**

This Settlement Agreement, Release and Waiver (“Agreement”) is made this 16<sup>th</sup> day of February 2010, by and between Plaintiff Kevin R. Caissie, on behalf of himself, the class and subclasses he purports to represent, his agents, representatives, assignees, heirs, executors, beneficiaries and trustees (collectively, “Plaintiffs”) and Defendant BJ’s Wholesale Club, Inc., on behalf of itself, its parents, divisions, subsidiaries, predecessors and successors, and its and their directors, officers, members, fiduciaries, insurers, employees, attorneys and agents (collectively, “BJ’s” or the “Company”) (BJ’s and Plaintiff are collectively referred to herein as the “Parties”).

WHEREAS, Plaintiff commenced litigation in the U.S. District Court for the District of Massachusetts (the “Court”) captioned *Kevin R. Caissie, Individually and on behalf of all other persons similarly situated v. BJ’s Wholesale Club, Inc.*, Civil Action No. 08-CV-30220-MAP (the “Action”), in which he asserted claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) and the Massachusetts General Laws Ch. 149, §§ 148 & 150, and Ch. 151, §§ 1A & 1B, arising out of alleged failure to appropriately compensate certain BJ’s mid-managers<sup>1</sup> (the “Disputed Positions”) for all hours worked per workweek (“FLSA claims”); and

<sup>1</sup> The mid-manager positions covered by this settlement are as follows: Bakery Manager, Closing Manager, Customer Services Manager, Deli/Seafood/Chicken Rotisserie Manager, Maintenance Recovery Manager, Meat Manager, Membership Acquisition and Retention Manager, Merchandise Assistant/Night Merchandise Assistant (including the Food, General Merchandise, and Zone II designations), Night Inventory Control Manager, Perishables Manager, Receiving/Inventory Control Manager, Receiving Manager/Night Receiving Manager, Replenishment Manager/Night Replenishment Manager, Tire Installation Manager, Front Line Shift Manager, Import-Export Manager, Jewelry Department Manager, Specialty Sales Manager, Mid-Manager In Training, Night Mid-Merchant and Mid-Merchant.

WHEREAS, Plaintiff also asserted an individual claim for retaliation under the FLSA, 29 U.S.C. § 215(a)(3), claiming that he was terminated by BJ's as a result of filing a Non-Payment of Wage and Workplace Complaint with the Massachusetts Attorney General ("retaliation claim"); and

WHEREAS, Plaintiff and his counsel, the law firm of Klafter Olsen & Lesser LLP ("Class Counsel"), purported to bring the claims asserted in the Action (other than for alleged retaliation) as a collective action pursuant to 29 U.S.C. § 216(b) and as a class action pursuant to FED. R. CIV. P. 23 on behalf of Plaintiff and other current and former employees who worked for BJ's in the Disputed Positions; and

WHEREAS as of this date, two individuals have filed consents to join the Action as party plaintiffs asserting FLSA claims against BJ's; and

WHEREAS BJ's denies that it has committed any wrongdoing or violated any state or federal law pertaining to payment of wages or hours of work or retaliation and has vigorously defended the claims asserted in the Action; and

WHEREAS, in order to avoid the expense and burden of further litigation, the Parties desire to resolve (i) any and all claims that were or could have been asserted under the wage and hour provisions of the FLSA on behalf of past or present BJ's employees who held the Disputed Positions who submit written consents to join the Action prior to the Final Approval of the Parties' settlement; (ii) any and all claims that were or could have been asserted based on the allegations against BJ's under state laws relating to the payment of wages, including without limitation overtime pay claims, on behalf of any and all individuals who held the Disputed Positions in the states of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and/or Virginia during the applicable statute of limitations period in each state (collectively, "Overtime Pay Claims"); and (iii) Plaintiff's individual retaliation claim, and

WHEREAS, BJ's represents that the Settlement Classes as defined in Section 4 include approximately Two Thousand Seven Hundred and Eighty (2,780) individuals, in the aggregate;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises hereinafter set forth, the Parties agree as follows:

**1. No Admission of Liability or Concession as to the Merits.**

BJ's expressly denies any wrongdoing or any violation of state or federal law as alleged in the Action. Nothing contained in this Agreement shall be construed as an admission of any liability or concession as to the merits of any claim by any Party, and all Parties agree not to offer this Agreement as evidence or otherwise use it in any judicial or administrative proceeding, except that this Agreement may be introduced in any proceeding for the sole purpose of enforcing its terms.

## 2. Approval of Settlement.

- (a) All terms of this Agreement are contingent upon the approval of the Parties' settlement and certification by the Court of the Settlement Classes (as defined in Section 4 below) for settlement purposes only.
  - (i) For purposes of this Agreement, "Preliminary Approval" shall be deemed to occur upon the issuance of a Court order conditionally certifying the Settlement Classes specified in Section 4 for purposes of providing notice to the affected individuals as described in Section 10(a) (the "Preliminary Approval Order"). The Preliminary Approval Order shall also, among other things, require any requests for exclusion from the Rule 23 Settlement Class or objections to the Settlement to be postmarked or received no later than twenty-one (21) days prior to the final approval hearing.
  - (ii) If the Court grants an order ("Final Approval Order") fully, finally, and unconditionally (1) granting the Parties' motion for approval of their settlement, (2) extinguishing claims against BJ's as specified in Section 17; and (3) dismissing the Action with prejudice, then the "Effective Date" shall be deemed to occur (A) thirty-five (35) days after the issuance of such order, if no appeal of said order is filed within that 35-day period, or (B) upon the final disposition of any appeal that has the effect of affirming the order in its entirety.
  - (iii) The Parties agree to cooperate and take all steps necessary and appropriate to obtain a Preliminary Approval Order and Final Approval Order, and otherwise effectuate all aspects of this Agreement.
- (b) BJ's stipulates for settlement purposes only to the certification of the Settlement Classes but does not waive, and instead expressly reserves, its right to challenge the propriety of conditional or class certification for any purpose as if this Agreement had not been entered into by the Parties in the event that the Court does not approve the settlement or the Effective Date does not occur.
- (c) The Parties and their counsel agree that they will, contemporaneously with their execution of this Agreement, execute a copy of the Joint Motion For Preliminary Approval of Class and Collective Action Settlement and Incorporated Memorandum of Law, attached as Tab A (the "Joint Motion"), seeking Preliminary Approval of their proposed settlement. Plaintiffs agree that they will file the Joint Motion with the Court within seven (7) days of each other, and execute this Agreement.
- (d) The Parties agree that if the Court does not approve any material term in the Parties' Joint Motion or requires as a condition to granting the Joint Motion any term that effects a material change in this Agreement, then this Agreement may be voided at either Party's option. The Parties further agree that BJ's being required

to pay any amount greater than the amount specified in Section 5 shall be deemed a material change. The Parties further agree that any ruling that the Court may make regarding Class Counsel's motion or petition for an award of attorneys' fees and costs pursuant to Section 6 shall not constitute a material change in this Agreement, unless such award has the effect of increasing the total amount BJ's must pay in complete settlement of all claims addressed by this Agreement.

- (e) In conjunction with the filing of the Joint Motion, the Parties will jointly request that the Court hold a fairness hearing regarding the Parties' request for approval of their proposed settlement not less than one-hundred (100) days after the filing of the Joint Motion. Counsel for the Parties will communicate with the Clerk of the Court and make any further filings necessary to secure the approval of their request.

### **3. Amendment to Complaint.**

- (a) Concurrent with the filing of the Parties' Joint Motion, Class Counsel shall file pursuant to FED. R. CIV. P. 15(a)(2) and with BJ's written consent an Amended Complaint in the Action in the form attached as Tab B to this Agreement. The Parties acknowledge that the Amended Complaint is intended to be identical in substance to the original Complaint filed in the Action, except that it adds (to the already pending alleged federal and Massachusetts claims) putative class action overtime pay claims and/or failure to pay wage claims under the state laws of Connecticut, Delaware, Florida, Georgia, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, and Virginia.
- (b) The Parties hereby stipulate and agree that BJ's shall not be required to serve or file a responsive pleading in response to the Amended Complaint until after the Court makes a final ruling on the Parties' Joint Motion. If, for any reason, (i) the Court denies the Parties' request for Preliminary Approval, (ii) the Court does not enter the Final Approval Order; or (iii) the Effective Date cannot occur, Class Counsel shall withdraw the Amended Complaint without prejudice. In the event that Class Counsel withdraws the Amended Complaint pursuant to this paragraph, no Party shall argue that BJ's consent to the filing of the Amended Complaint or Class Counsel's withdrawal of the Amended Complaint has any bearing on the merits of any subsequent motion or effort to amend the operative complaint in the Action.

### **4. Settlement Classes.**

- (a) The Federal Class shall include all individuals who have filed consents to join the Action (including without limitation all individuals who timely return a Claim Form containing a consent to join the Action) in any state in the United States and who worked for BJ's as in any of the Disputed Positions within the three years prior to filing their consent to join the Action.

- (b) The State Class shall include all individuals employed in any of the Disputed Positions for BJ's:
- (i) In Connecticut at any time from January 24, 2008 through January 24, 2010;
  - (ii) In Delaware at any time from January 24, 2009 through January 24, 2010;
  - (iii) In Florida at any time from January 24, 2008 through January 24, 2010;
  - (iv) In Georgia at any time from January 24, 2008 through January 24, 2010;
  - (v) In Maine at any time from January 24, 2004 through January 24, 2010;
  - (vi) In Maryland at any time from January 24, 2007 through January 24, 2010;
  - (vii) In Massachusetts at any time from November 18, 2005 through January 24, 2010;
  - (viii) In New Hampshire at any time from January 24, 2008 through January 24, 2010;
  - (ix) In New Jersey at any time from January 24, 2008 through January 24, 2010;
  - (x) In New York at any time from January 24, 2004 through January 24, 2010;
  - (xi) In North Carolina at any time from January 24, 2008 through January 24, 2010;
  - (xii) In Pennsylvania at any time from January 24, 2007 through January 24, 2010;
  - (xiii) In Rhode Island at any time from January 24, 2007 through January 24, 2010;
  - (xiv) In South Carolina at any time from January 24, 2007 through January 24, 2010; and
  - (xv) In Virginia at any time from January 24, 2007 through January 24, 2010.
- (c) In the event that, for any reason, the Court does not enter a Final Approval Order or the Effective Date cannot occur, the Court's certification of the Settlement Classes, including the two classes listed above, shall be void, of no effect, and shall not be used for any purpose whatsoever in any further proceeding(s) in any of the above-referenced lawsuits or in any other lawsuit asserting the same or similar claims and causes of action and the parties will be returned to their

respective positions *nunc pro tunc* as of October 21, 2009, the date on which they reached an agreement in principle to settle this litigation.

**5. Settlement Payment.**

- (a) BJ's agrees to pay a total sum not to exceed Nine Million One-Hundred and Ninety Four Thousand and Four-Hundred and Ninety-Nine Dollars (\$9,194,499.00) (the "Total Settlement Amount") in order to fully and finally resolve the Overtime Pay Claims in their entirety. The Total Settlement Amount is inclusive of Class Counsel's fees and costs; interest; litigation costs; back wages; liquidated/statutory damages; and plaintiff's and party plaintiffs' premiums, if any. In addition, the Total Settlement Amount will cover one-half (50%) of the cost of settlement administration with BJ's being responsible to pay the other 50% outside of the Total Settlement Amount. Finally, the Total Settlement Amount will cover the full amount of both the participating class members' W-2 withholdings (and state/local withholdings if applicable), and any employer share of payroll taxes on back wage payments made to participating claimants. The Total Settlement Amount less the items listed in the three sentences directly above is defined as the "Net Settlement Amount."
- (b) Any portion of the Net Settlement Amount that is unclaimed by members of the Settlement Classes who have failed to timely return a Claim Form as required by Section 10(b) or failed to cash a check within the time period allotted under Section 13(a) shall be transferred to the BJ's Charitable Foundation, a donor advised fund of Fidelity Investments (the "Cy Pres Beneficiary").<sup>2</sup>

**6. Attorneys' Fees and Costs.**

- (a) Class Counsel may petition the Court for an award of attorneys' fees and costs in conjunction with the Parties' settlement. Any such petition shall be filed no later than ten (10) days prior to the date of the final approval hearing.
- (b) Any attorneys' fees and costs awarded in conjunction with the Parties' settlement shall be paid from the Total Settlement Amount and shall reduce the quantity of the Net Settlement Amount payable to members of the Settlement Classes pursuant to Section 12. BJ's will not oppose any request by Class Counsel for an

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<sup>2</sup> The parties agree that the BJ's Charitable Foundation is an appropriate Cy Pres Beneficiary for the remainder of the settlement funds. Specifically, the mission of BJ's Charitable Foundation is to enhance and enrich community programs that primarily benefit children and families. Since 2005, the BJ's Charitable Foundation has donated more than \$7.4 million to over 800 community organizations in states where BJ's Clubs are located. The BJ's Charitable Foundation contributes the bulk of its funding to organizations that provide services to those in need, concentrating its efforts on the areas of hunger prevention, self-sufficiency, health care and education.

award of fees and costs that does not exceed thirty percent (30%) of the Total Settlement Amount plus actual costs.

**7. Service Payments to Named Plaintiffs**

- (a) Class Counsel may petition for an award of service payments to named plaintiff Caissie and opt-ins Greg Bryant and Lee Smith. Any such petition shall be filed no later than ten (10) days prior to the date of the final approval hearing.
- (b) Any service payments awarded to named plaintiff Caissie and opt-in party plaintiffs Bryant and Smith shall be in addition to payments that they shall receive as members of the Settlement Classes pursuant to Section 12. Any such service payments awarded by the Court shall be distributed by the Settlement Administrator in separate checks mailed contemporaneously with the mailing of checks pursuant to Section 13 and shall be reported to state and federal taxing authorities as non-wage income on IRS Form 1099. BJ's will not oppose any request by Class Counsel for service payments to the plaintiffs up to the following amounts:
  - (i) Kevin Caissie: \$10,000
  - (ii) Greg Bryant: \$10,000
  - (iii) Lee Smith: \$10,000

**8. Settlement Administrator.**

- (a) The Parties shall jointly retain The Garden City Group, Inc. ("Garden City Group" or the "Administrator") to serve as the administrator of the settlement and perform services including without limitation dissemination of notices to eligible class members, analysis of claim forms, calculation of payments due, distribution of awards from the Net Settlement Amount to eligible class members, tax reporting related to settlement, and providing notices of the Parties' settlement to governmental authorities as required by law.
- (b) One-half (50%) of the costs of administering the Parties' settlement, including one-half (50%) of the fees and costs paid to the Settlement Administrator, shall be paid from the Total Settlement Amount and shall reduce the quantity of the Net Settlement Amount payable to members of the Settlement Classes. The Parties shall instruct Garden City Group to prepare a binding estimate of fees and costs for all services to be provided in conjunction with the Parties' settlement and this Agreement (the "Administrative Costs") prior to the filing of the Joint Motion. Upon Final Approval, Plaintiffs' counsel shall authorize the payment to Garden City Group of the Administrative Costs from the monies on deposit in the Escrow Account as defined in Section 11 upon Final Approval. The other half shall be paid by BJ's promptly upon billing by the Administrator.

**9. Notices Mandated by Statute.**

- (a) Upon the filing of the Joint Motion, pursuant to Section 2(c), the Parties will instruct the Settlement Administrator to mail notices of the Parties' proposed settlement to an "Appropriate Federal Official" and "Appropriate State Officials" (collectively, "Government Officials") no later than ten (10) days thereafter as required by 28 U.S.C. § 1715.
- (b) BJ's, with the assistance of the Settlement Administrator, shall prepare the notices referenced in the preceding Section, which shall include as exhibits the Joint Motion, this Agreement, and all Complaints filed in the Action. Such mailings shall also include information regarding the portion of the Net Settlement Amount that the Parties anticipate would be distributed to individuals living in each state following the Effective Date.
- (c) The mailings described in this Section shall not be subject to the non-disclosure obligations in Section 16, and neither Party shall be deemed in breach of those non-disclosure obligations as a result of the Settlement Administrator's mailing of such materials to the Government Officials or as a result of any other disclosures made to Government Officials regarding such mailings.

**10. Distribution of Net Settlement Amount.**

(a) Mailing of Notices.

Within fourteen (14) days after the Court grants Preliminary Approval of the Parties' proposed settlement, the Parties shall instruct the Settlement Administrator to compile and mail to members of the Settlement Classes packets containing a notice of the Parties' proposed settlement in the form attached as Tab C ("Notice") and a Consent to Join and Claim Form ("Claim Form") in the form attached as Tab D (the "Notice Packets"). The Settlement Administrator shall send such packets by certified First Class U.S. Mail to each member of each of the Settlement Classes at such individuals' last known address as provided by BJ's. For any returned Notice Packets, the Settlement Administrator shall conduct reasonable address verification efforts consistent with the customary practices in the settlement administration industry. Forty-five (45) days after this initial mailing, the Settlement Administrator shall perform a second mailing of the Notice Packets to any class member who has not submitted a Claim Form or Request for Exclusion.

(b) Claim Form.

The Claim Form to be distributed as a part of the Notice Packet shall denote that the individual returning the form consents to become a party plaintiff in the Action, authorizes counsel to file with the Court the Claim Form containing the individual's written consent, and, that upon the Effective Date will release all Overtime Pay Claims against BJ's.

- (i) In order to be valid and effective, a Claim Form must be signed, dated, and postmarked or otherwise returned to the Settlement Administrator no later than the date set forth in the Notice which shall be thirty (30) days after the final approval hearing. Upon receipt of an unsigned, untimely, incomplete or altered form, the Settlement Administrator shall promptly apprise the individual who returned the form of its deficiency and provide such individual with a substitute form that the individual may use to cure the deficiency within twenty (20) days. A Claim Form that remains unsigned, untimely, incomplete or altered after the twenty-one (21) days after a deficiency letter has been mailed by the Settlement Administrator shall be void, absent a showing of good cause as determined by the Court. The Parties agree to allow the Settlement Administrator to resolve any challenges regarding the validity of any Claim Form made pursuant to this Section, subject to approval by the Court.
- (ii) Any member of the State Class who (a) does not return a Claim Form to the Settlement Administrator in compliance with the preceding paragraph, and (b) does not seek to be excluded from the Parties' settlement prior to the date set forth in the Notice, shall be deemed to release all Overtime Pay Claims against BJ's as described in Section 17(a) and shall be deemed to have waived any right to receive a payment in conjunction with the Parties' settlement.
- (iii) Any member of any of the Federal Class who (a) has filed a consent to join the Action prior to Preliminary Approval, and (b) does not return a Claim Form to the Settlement Administrator in compliance with the Section 10(b)(i), shall be deemed to release all Overtime Pay Claims against BJ's as described in Section 17(a) and 17(b) and shall receive a payment by mail to his or her last known address or an address of Class Counsel's designation.
- (iv) Upon the expiration of the period set forth in the Notice in which members of the Settlement Classes may return Claim Forms, the Settlement Administrator shall compile and transmit the Claim Forms it has received to Class Counsel (with a copy of all such materials to counsel for BJ's), in both an unredacted form and in a form redacted as to the social security numbers of the members of the Settlement Classes, and Class Counsel shall within fourteen (14) days thereafter file, under seal, the redacted forms with the Court as notices of consents to join the Action on behalf of the individuals who timely have returned valid claim forms.

## **11. Funding of Settlement Account.**

Within fourteen (14) days after the entry of a Preliminary Approval Order, BJ's shall pay funds in the amount of the Total Settlement Amount into an interest-bearing account designated by Plaintiffs' counsel and to be under the control of Plaintiffs' counsel and designated as a Qualified Settlement Fund pursuant to the Internal Revenue Code (the

“Escrow Account”) to be held in escrow pending Effective Date, after which BJ’s shall have no further interest in the Total Settlement Amount.

- (a) The principal and interest in the Escrow Account (the amount deposited plus interest less any notice and administration costs that have been incurred) shall be returned to BJ’s within 5 business days of any of the following events: (i) the District Court determines not to enter a Preliminarily Approval Order; (ii) BJ’s elects to terminate the Settlement in accordance with paragraph 18 below; (iii) the District Court determines not to enter a Final Approval Order; or (iv) a Final Approval Order entered by the District Court is set aside by an appellate court, unless otherwise agreed in writing by the Parties.
- (b) Notwithstanding the preceding paragraph, the funds specified in this Section 11 shall remain in the Escrow Account pending the disposition of any appeal of any Final Approval Order.

**12. Calculation of Individual Awards.**

Each individual class member who submits a Claim Form will receive an amount calculated pursuant to the formula below (his or her “Claim Amount”):

- (1) Calculate the “Distribution Fund” by subtracting from the Total Settlement Amount:
  - (i) any attorneys’ fees and costs awarded to Class Counsel by the Court,
  - (ii) any service payments awarded to the class representative plaintiffs by the Court,
  - (iii) one-half (50%) of the Notice and Administrative Costs, and
  - (iv) any employer share of payroll taxes on back wage payments made to participating claimants;<sup>3</sup>
- (2) Using form W2s and earning statements, where appropriate, calculate the total wages earned while in one of the Disputed Positions by all members of the Settlement Classes, except those in the states of New York, Massachusetts, and Maine, during the period between January 24, 2007 and January 24, 2010;
- (3) Using form W2s and earning statements, where appropriate, calculate the total wages earned while in one of the Disputed Positions by members of the settlement class from Massachusetts during the period between November 18, 2005 and January 24, 2010;

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<sup>3</sup> The Claims Administrator will estimate this number to the closest possible dollar. The participating class members’ back wage payments are subject to W-2 withholdings (and state/local withholdings if applicable).

- (4) Using form W2s and earning statements, where appropriate, calculate the total wages earned while in one of the Disputed Positions by members of the settlement class from New York and Maine during the period between January 24, 2004 and January 24, 2010;
- (5) Sum (2), (3), and (4), above;
- (6) Divide the total wages earned by the individual claimant while in any of the Disputed Positions during the relevant statutory period by (5), above, to get the fraction of the Distribution Fund to which that individual claimant is entitled; and
- (7) Multiply the Distribution Fund, (1) above, by the result of (6), above, to get the individual claimant's Claim Amount.

**13. Payments to Class Members.**

Following the Effective Date, the completion of the administration process, and further order of the Court, Plaintiff's counsel shall transfer funds from the Escrow Account to the Settlement Administrator for distribution by mailing checks, less applicable taxes and withholdings, to each member of each of the Settlement Classes who has timely returned a valid Claim Form ("Eligible Claimants").

- (a) Checks issued pursuant to the preceding paragraph shall expire ninety (90) days after they are issued, but a failure by any Eligible Claimant to deposit or cash a check within the time period allotted shall have no effect on that individual's release of claims pursuant to Section 17. Subject to good cause shown by the Eligible Claimant, a check may be reissued for up to forty five (45) days following the original ninety day period.
- (b) The Settlement Administrator shall withhold from payments to Eligible Claimants taxes and other sums the Claimant is required to pay by state or federal law. The Parties agree that fifty percent (50%) of the amount paid to each participating member of the Settlement Classes shall be treated as wages, and the remaining fifty percent (50%) shall be treated as liquidated/statutory damages for tax purposes.
- (c) The payment of any amount as provided herein to Eligible Claimants shall have no impact on their entitlement to or receipt of any benefits under any BJ's policy, practice, or welfare or benefit plan; or, as allowable by law, to their entitlement or receipt of workers compensation benefits or unemployment compensation.
- (d) The payment to Eligible Claimants is fully dependent upon a full and complete release of all claims as defined in the Claim Form, attached as Tab D.

**14. Return of Claim Amounts for Opt-Outs.**

For each member of the Settlement Classes who seeks to be excluded from the Parties' settlement prior to the Court order resulting in Final Approval, the Claim Amount for that individual shall revert to BJ's. The Settlement Administrator shall transfer to BJ's the aggregate of all Claim Amounts that revert to the Company pursuant to this paragraph, along with all interest earned on such Claim Amounts while on deposit in the Escrow Account, within fourteen (14) days after Final Approval.

**15. Transfer of Remainder to Cy Pres Beneficiary.**

One hundred twenty (120) days after Final Approval, the Settlement Administrator shall transfer all remaining funds it holds pertaining to the Parties' settlement or this Agreement to the Cy Pres Beneficiary as designated in Section 5(c). The funds transferred to the Cy Pres Beneficiary shall include: (i) the aggregate of all Claim Amounts forfeited by members of the Settlement Classes who do not timely return Claim Forms as specified in Section 10(b); (ii) the aggregate of all Claim Amounts corresponding to checks that expire pursuant to Section 13(a); and (iii) all interest accrued on the funds deposited into the Escrow Account. The Final Distribution of Funds shall be deemed to have occurred upon the transfer of funds to such Cy Pres Beneficiary pursuant to this paragraph.

**16. Non-Disclosure.**

- (a) Plaintiffs, BJ's, and counsel for the respective Parties agree not to disclose or publicize this settlement or its terms and conditions other than as set forth herein. Any and all public communication of the settlement following the execution of this agreement (including statements on the website of Plaintiff's counsel) must be consistent with prior public statements concerning the settlement. To the extent the Parties are approached by media for public statements, they will only make statements consistent with the prior public statements, the Notice or Claim form disseminated to members of the Classes, concerning the settlement approval proceedings, or previously agreed to as part of a "script" or "talking points." Nothing in this Agreement shall prohibit any Party or counsel for any Party from responding with truthful information to any disparaging statement regarding the Parties or the settlement made in any print or electronic media outlet. BJ's also may respond to inquiries from media outlets regarding the settlement by stating, in substance, that the company denies any liability in the action and settled the case in order to avoid the burden of continued litigation.
- (b) No Party or counsel for any Party shall disclose, acknowledge or make any statement of any kind about any position or statement made during mediation or settlement discussions, except as may be required to secure Preliminary Approval and Final Approval and for the purposes noted in Section 16(a).

- (c) Notwithstanding the foregoing, nothing herein shall prevent Class Counsel from communicating with members of the Settlement Class about the Parties' settlement or the Agreement, and nothing herein shall prevent BJ's from communicating with its employees on any subject, provided any communications with Settlement Class members who are employees must be consistent with the statement previously approved by Plaintiffs' counsel.

**17. Releases.**

- (a) Upon the Effective Date, all individuals who join the Action as members of the Federal Class shall be deemed to fully, forever, irrevocably and unconditionally release, remise, and discharge BJ's Wholesale Club, Inc., its parents, divisions, subsidiaries, predecessors and successors, and its and their directors, officers, members, fiduciaries, insurers, employees, attorneys and agents (each in their individual and corporate capacities) (collectively referred to as the "Released Parties"), from any and all suits, actions, causes of action, claims, or demands against the Released Parties or any of them based on putative violations of federal law pertaining to hours of work or payment of wages, including without limitation all claims that were asserted or could have been asserted in the Action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, based on events that occurred or are alleged to have occurred during the three year period ending with the date of entry of a Final Approval Order. This release shall be conspicuously included in the Claim Form immediately before the signature line.
- (b) Upon the Effective Date, all members of each of the Rule 23 Settlement Class who do not submit a request for exclusion from the Rule 23 Settlement Class shall be deemed to fully, forever, irrevocably and unconditionally release, remise, and discharge the Released Parties from any and all suits, actions, causes of action, claims, or demands against the Released Parties or any of them based on putative violations of any state or local law pertaining to hours of work or payment of wages, including without limitation all claims that were asserted or could have been asserted in the Action, or based on the allegations in the Action, regarding events that occurred or are alleged to have occurred during the applicable class period, as defined in Section 4, above.

**18. Dismissal of Actions.**

The Final Approval Order shall provide that upon the Effective Date, the Action shall be dismissed with prejudice and without costs (except as provided herein) with the Court retaining jurisdiction over the case for purpose of ensuring compliance with the terms of this Settlement Agreement and any order of the Court issued in connection with it.

**19. Termination of Settlement Agreement.**

If greater than an agreed to percentage of all members of the Settlement Classes, in the aggregate, seek to be excluded from the Parties' settlement, this Agreement shall be

voidable at BJ's option, provided that BJ's exercises this option no later than fourteen (14) days prior to the final approval hearing. If BJ's exercises its option to void the Agreement pursuant to this paragraph, the Agreement shall be null and void and of no effect whatsoever, except for paragraphs 3(b), 4(c), and 11 above. By signing this Agreement, Plaintiff and the two current opt-in party plaintiffs agree that they will not seek to be excluded from the Parties' settlement.

**20. Non-Waiver.**

No delay or omission by either Party in exercising any right under this Agreement shall operate as a waiver of that or any other right. A waiver or consent given by a Party on anyone occasion shall be effective only in that instance and shall not be construed as a bar or waiver of any right on any other occasion.

**21. Complete Agreement.**

Other than as stated herein, the Parties warrant that no representation, promise, or inducement has been offered or made to induce any Party to enter into this Agreement and that they are competent to execute this Agreement and accept full responsibility therefore. This Agreement contains and constitutes the entire understanding and agreement between the Parties and supersedes all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Agreement may not be amended or modified except by a writing signed by authorized representatives of all Parties.

**22. Knowing and Voluntary Agreement.**

Plaintiff, the two current opt-in party plaintiffs, and Class Counsel each agree that they are entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. Plaintiff and the two current opt-in party plaintiffs further affirm that none of them have been coerced, threatened, or intimidated into signing this Agreement; that they have been advised to consult with an attorney; and that each of them in fact has consulted with an attorney before signing this Agreement. Class Counsel represents that they have conducted a thorough investigation into the facts of the Action and have diligently pursued an investigation of the Overtime Pay Claims asserted on behalf of members of the Settlement Classes against BJ's. Based on their own independent investigation, analysis of information provided by BJ's including documents and interviews, and the extensive mediation which led to this settlement Class Counsel state that they are of the opinion that the settlement with the Company is fair, reasonable, and adequate and is in the best interest of the members of the Settlement Classes, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by BJ's.

**23. Notices.**

Any notices issued pursuant to the terms of this Agreement shall be sent to the Parties at the addresses of their respective counsel as follows:

For Plaintiffs to:

Seth R. Lesser, Esq.  
Fran L. Rudich, Esq.  
Klafter Olsen & Lesser LLP  
Two International Drive, Suite 350  
Rye Brook, NY 10573  
Telephone: 914.934.9200  
Facsimile: 914.934.9220  
seth.lesser@klafterolsen.com  
fran.rudich@klafterolsen.com

For BJ's to:

Ellen C. Kearns, Esq.  
Christopher M. Pardo, Esq.  
Constangy, Brooks & Smith, LLP  
535 Boylston Street, Suite 902  
Boston, MA 02116  
Telephone: 617.849.7880  
Facsimile: 617.849.7870  
ekearns@constangy.com  
cpardo@constangy.com

**24. Severability.**

If any part of this Agreement is found to be illegal, invalid, inoperative or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law.

**25. Governing Law.**

This Agreement shall be governed by Massachusetts law, without regard to that state's choice of law provisions. The Parties also hereby submit to the jurisdiction of the Court for all purposes relating to the review, approval and enforcement of the terms of this Agreement.

**IN WITNESS WHEREOF**, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL

BJ'S WHOLESALE CLUB, INC.

\_\_\_\_\_  
Seth Lesser, Esq.,  
Klafter Olsen & Lesser LLP

\_\_\_\_\_  
Lon F. Povich, Esq.,  
Executive Vice President, General Counsel, and  
Secretary for BJ's Wholesale Club, Inc.

PLAINTIFF, on behalf of himself and  
others similarly situated,

\_\_\_\_\_  
Kevin R. Caissie  
Dated: \_\_\_\_\_

OPT-IN PARTY PLAINTIFFS,

\_\_\_\_\_  
Greg Bryant  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Lee Smith  
Dated: \_\_\_\_\_

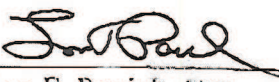
Dated: February \_\_\_\_\_, 2010

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL

BJ'S WHOLESALE CLUB, INC.

\_\_\_\_\_  
Seth Lesser, Esq.,  
Klafter Olsen & Lesser LLP

  
\_\_\_\_\_  
Lon F. Povich, Esq.,  
Executive Vice President, General Counsel, and  
Secretary for BJ's Wholesale Club, Inc.

PLAINTIFF, on behalf of himself and  
others similarly situated,

\_\_\_\_\_  
Kevin R. Caissie  
Dated: \_\_\_\_\_

OPT-IN PARTY PLAINTIFFS,

\_\_\_\_\_  
Greg Bryant  
Dated: \_\_\_\_\_

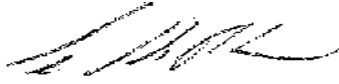
\_\_\_\_\_  
Lee Smith  
Dated: \_\_\_\_\_

Dated: February 16, 2010

**IN WITNESS WHEREOF**, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL

BJ'S WHOLESALE CLUB, INC.



\_\_\_\_\_  
Seth Lesser, Esq.,  
Klafter Olsen & Lesser LLP

\_\_\_\_\_  
Lon F. Povich, Esq.,  
Executive Vice President, General Counsel, and  
Secretary for BJ's Wholesale Club, Inc.

PLAINTIFF, on behalf of himself and  
others similarly situated,

\_\_\_\_\_  
Kevin R. Caissie  
Dated: \_\_\_\_\_

OPT-IN PARTY PLAINTIFFS,

\_\_\_\_\_  
Greg Bryant  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Lee Smith  
Dated: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL

BJ'S WHOLESALE CLUB, INC.

\_\_\_\_\_  
Seth Lesser, Esq.,  
Klafter Olsen & Lesser LLP

\_\_\_\_\_  
Lon F. Povich, Esq.,  
Executive Vice President, General Counsel, and  
Secretary for BJ's Wholesale Club, Inc.

PLAINTIFF, on behalf of himself and  
others similarly situated,

Kevin R. Caissie  
Kevin R. Caissie  
Dated: 2/12/2010

OPT-IN PARTY PLAINTIFFS,

\_\_\_\_\_  
Greg Bryant  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Lee Smith  
Dated: \_\_\_\_\_

Dated: February 12, 2010

**IN WITNESS WHEREOF**, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL

BJ'S WHOLESALE CLUB, INC.

\_\_\_\_\_  
Seth Lesser, Esq.,  
Klafter Olsen & Lesser LLP


\_\_\_\_\_  
Lon F. Povich, Esq.,  
Executive Vice President, General Counsel, and  
Secretary for BJ's Wholesale Club, Inc.

PLAINTIFF, on behalf of himself and  
others similarly situated,

\_\_\_\_\_  
Kevin R. Caissie  
Dated: \_\_\_\_\_

OPT-IN PARTY PLAINTIFFS.

\_\_\_\_\_  
Greg Bryant  
Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Lee Smith  
Dated: 2-11-10

Dated: February 12, 2010

IN WITNESS WHEREOF, the Parties and Class Counsel each voluntarily and without coercion have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

CLASS COUNSEL

BJ'S WHOLESALE CLUB, INC.


\_\_\_\_\_  
Seth Lesser, Esq.,  
Klafter Olsen & Lesser LLP

\_\_\_\_\_  
Lon F. Povich, Esq.,  
Executive Vice President, General Counsel, and  
Secretary for BJ's Wholesale Club, Inc.

PLAINTIFF, on behalf of himself and  
others similarly situated.

\_\_\_\_\_  
Kevin R. Caissie  
Dated: \_\_\_\_\_

OPT-IN PARTY PLAINTIFFS.

  
\_\_\_\_\_  
Greg Bryant  
Dated: 2/11/10

\_\_\_\_\_  
Lee Smith  
Dated: \_\_\_\_\_

Dated: February 12, 2010