

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d)  
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 27, 2023

**FRESH VINE WINE, INC.**  
(Exact name of registrant as specified in its charter)

**Nevada**  
(State or Other Jurisdiction  
of Incorporation)

**001-41147**  
(Commission File Number)

**87-3905007**  
(I.R.S. Employer  
Identification No.)

**11500 Wayzata Blvd. #1147**  
**Minnetonka, MN 55305**  
(Address of Principal Executive Offices) (Zip Code)

**(855) 766-9463**  
(Registrant's telephone number, including area code)

**Not Applicable**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.001 per share	VINE	NYSE American

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

## **Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers; Compensatory Arrangements of Certain Officers.**

The information set forth in Item 8.01 of this Current Report on Form 8-K is incorporated herein by reference.

Pursuant to the Settlement Agreement described in Item 8.01 of this report, Damian Novak, Executive Chairman and a member of the Board of Directors (the “Board”) of Fresh Vine Wine, Inc. (the “Company”), has agreed to resign as Executive Chairman and remove himself from his management duties with the Company by February 20, 2023, and further agreed to resign from the Board promptly following completion of pending capital raising efforts involving a contemplated subscription rights offering. A registration statement (Registration No. 333-269082) relating the contemplated rights offering has been filed with the Securities and Exchange Commission (“SEC”) but has not yet become effective, and the Company’s securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. There is no guaranty that the rights offering will ultimately be conducted or, if conducted, will be a successful means of raising capital.

Also pursuant to the Settlement Agreement, Rick Nechio, the Company’s interim Chief Executive Officer and a member of the Board, has agreed to resign from the Board by February 20, 2023. Mr. Nechio continues to serve as interim Chief Executive Officer of the Company while the Company continues to search for a permanent principal executive officer.

The agreements of Messrs. Novak and Nechio to resign from the Board were not due to a disagreement with the Company on any matter relating to the Company’s operations, policies or practices.

In conjunction with the Settlement Agreement, and as described in Item 8.01 of this report, the Company and Janelle Anderson, the Company’s former Chief Executive Officer, have agreed to enter into the Anderson Consulting Agreement, pursuant to which the Company has agreed to grant and issue to Ms. Anderson 500,000 shares of the Company’s common stock on the February 20, 2023 date of the Settlement Closing and contingent upon the occurrence thereof.

## **Item 8.01 Other Events.**

### *Settlement of Litigation with Janelle Anderson*

The Company has been a party to an action pending in Hennepin County District Court, captioned Janelle Anderson v. Fresh Vine Wine, Inc., Damian Novak, and Rick Nechio, Court File No. 27-CV-22-11491 (the “Lawsuit”), in which Ms. Anderson alleged, among other things, that the Company terminated her employment in retaliation for reports of alleged wrongdoing pursuant to the Minnesota Whistleblower Act. Defendants also included Damian Novak, Executive Chairman and a director of the Company, and Rick Nechio, interim Chief Executive Officer and a director of the Company.

On January 27, 2023, the Company entered into a Global Mutual Compromise, Release and Settlement Agreement (the “Settlement Agreement”) among Ms. Anderson and each of Messrs. Novak and Nechio. Pursuant to the Settlement Agreement, Ms. Anderson agreed to dismiss the Lawsuit with prejudice and to file with the court any and all documents necessary to effect such dismissal with prejudice within five business days after all settlement consideration has been actually received by her, and the parties agreed to general mutual releases. The Company also agreed to indemnify Ms. Anderson and hold her harmless against any liability, civil damages, penalties, or fines claimed against her for any of her actions done within the course and scope of her employment with the Company as required by Minn. Stat. §181.970, and under any applicable insurance policies, including but not limited to any directors and officers policies. The Settlement Agreement also contains a non-disparagement provision.

As consideration for Ms. Anderson’s dismissal and release, and provided that she does not revoke or rescind the Settlement Agreement within prescribed time periods, the Company agreed to make a cash payment to Ms. Anderson in the amount of \$1,250,000, less certain attorney fees and relevant taxes and other withholdings, in a lump sum. This cash payment is in addition to \$400,000 that the Company previously paid to Ms. Anderson in January 2023 in respect of 2022 bonus compensation earned by Ms. Anderson under her employment agreement while employed by the Company. Also as contemplated by the Settlement Agreement, the Company and Ms. Anderson have agreed to enter into a consulting agreement (the “Anderson Consulting Agreement”) pursuant to which Ms. Anderson will provide certain consulting services to the Company for a period of six months. As consideration for such services, the Company has agreed to grant and issue to Ms. Anderson 500,000 shares of the Company’s common stock (the “Anderson Consulting Shares”) from the Company’s 2021 Equity Incentive Plan (the “Anderson Consulting Share Grant”). The cash payment and the Anderson Consulting Share Grant will be made at the “closing” of the Settlement Agreement, which is scheduled to occur on February 20, 2023 (the “Settlement Closing”), subject to Ms. Anderson not revoking or rescinding the Settlement Agreement during the applicable revocation period.

Also pursuant to the Settlement Agreement, Damian Novak, Executive Chairman and a member of the Board, has agreed to resign as Executive Chairman and remove himself from his management duties with the Company by February 20, 2023, and has agreed to resign from the Board promptly following completion of certain pending Company capital raising efforts. In addition, Rick Nechio, the Company's interim Chief Executive Officer and a member of the Board, has agreed to resign from the Board by February 20, 2023. The Settlement Agreement further provides that the Company will announce by the date of the Settlement Closing that it is searching for a permanent chief executive officer to replace Mr. Nechio, who has been serving as Chief Executive Officer in an interim capacity since June 2022. Following the Company's appointment of a new chief Executive officer, the Company may elect to employ Mr. Nechio in an advisory capacity to aid in the transition of his management duties.

The parties to the Settlement Agreement also agreed to the substance of press releases/narratives, and agreed to the substance of a letter of reference to be exchanged at the Settlement Closing.

The foregoing summaries of the Settlement Agreement and the Anderson Consulting Agreement are qualified in all respects by the agreements themselves, copies of which are attached as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K and incorporated by reference herein.

#### *Founders' Common Stock Forfeitures*

In conjunction with entering into the Settlement Agreement, Rick Nechio and Damian Novak entered into Agreements to Forfeit Shares of Common Stock (the "Forfeiture Agreements") pursuant to which each agreed to forfeit and transfer back to the Company without consideration 250,000 shares of common stock of the Company held by them (a total of 500,000 shares), to enable the Company to issue the Anderson Consulting Shares to Ms. Anderson without subjecting the Company's other stockholders to dilution therefrom (the "Anderson Consulting-related Forfeitures"). The Anderson Consulting-related Forfeitures will be effective upon the February 20, 2023 Settlement Closing and contingent upon the occurrence thereof.

The foregoing summary of the Forfeiture Agreements with Messrs. Nechio and Novak are qualified in all respects by the form of the agreement itself, a copy of which is attached as Exhibit 10.3 to this Current Report on Form 8-K and incorporated by reference herein.

### **Item 9.01 Financial Statements and Exhibits.**

#### **(d) Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#"><u>Global Mutual Compromise, Release and Settlement Agreement dated January 27, 2023 among the Company, Janelle Anderson, Damian Novak and Rick Nechio</u></a>
10.2	<a href="#"><u>Consulting Agreement dated as of January 27, 2023 by and between by and between Fresh Vine Wine, Inc. and Janelle Anderson</u></a>
10.3	<a href="#"><u>Form of Agreement to Forfeit Shares of Common Stock dated January 27, 2023 by and between Fresh Vine Wine, Inc. and each of Damian Novak and Rick Nechio</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**FRESH VINE WINE, INC.**

Date: January 27, 2023

By: /s/ Rick Nechio  
Rick Nechio  
Interim Chief Executive Officer

## EXHIBIT INDEX

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**GLOBAL MUTUAL COMPROMISE, RELEASE  
AND SETTLEMENT AGREEMENT**

THIS GLOBAL MUTUAL COMPROMISE, RELEASE AND SETTLEMENT AGREEMENT (hereinafter “Agreement”) is made and entered into on the dates indicated below by and between the Parties identified below (and binding themselves and their respective interests and affiliates, all as set out herein):

1. Janelle Anderson (the former Chief Executive Officer of Fresh Vine Wine, Inc.), being the Plaintiff in the [defined below] Lawsuit (hereinafter “Anderson”); and
2. Fresh Vine Wine, Inc., is a Defendant in the Lawsuit, is a publicly traded Nevada domestic corporation organized under Nevada Revised Statutes Chapter 78, with its corporate headquarters located at 11500 Wayzata Blvd. #1147, Minnetonka, MN 55305, in the [defined below] Lawsuit (hereinafter “FVW”);
3. Damian Novak is a Defendant, individually, and in all of his respective capacities, including as an officer or director of FVW and in any other purported or actual representative capacities (*e.g.*, in any claimed derivative capacity), in the [defined below] Lawsuit (hereinafter “Novak”); and
4. Rick Nechio is a Defendant, individually, and in all of his respective capacities, including as an officer or director of FVW and in any other purported or actual representative capacities (*e.g.*, in any claimed derivative capacity), in the [defined below] Lawsuit (hereinafter “Nechio”).
5. FVW, Novak, and Nechio are collectively referenced in the singular as Defendant Group (hereinafter “Defendant Group”).
6. “Party” shall refer to any of Anderson, FVW, Novak, and Nechio in the singular, and “Parties” shall jointly refer to Anderson, FVW, Novak, and Nechio.

## **DEFINITIONS AND RECITALS**

The Recitals (including definitions) are as follows:

**WHEREAS**, the Parties have been involved directly or indirectly in the Controversy, which term includes, but is not limited to, the [defined below] Lawsuit, all as described and defined herein; and

**WHEREAS**, the lawsuit that is presently pending between the Parties (Anderson and the Defendant Group) in the matter styled: *Janelle Anderson v. Fresh Vine Wine, Inc., Damian Novak, and Rick Nechio*, Court File No. 27-CV-22-11491, in Fourth Judicial District of Hennepin County, Minnesota (the “Lawsuit”), which term Lawsuit as used herein, includes all Parties, matters, and pending or threatened claims, counterclaims and Third-Party Petitions/actions, which were or might or could be or could have been filed therein; and

**WHEREAS**, the Lawsuit defined above is the only live or active matter containing claims, issues or allegations presently pending between any of these Parties hereto (including as described or addressed directly or indirectly or by implication, in any documents exchanged between the Parties heretofore), and, that for the purposes hereof, all prior or threatened claims or proceedings (whether currently “live” or asserted, or previously only threatened or alleged) or actions between any of these Parties (or all of them), whether previously filed or only threatened or which could possibly emanate from the filing or initiation of any litigation or proceeding(s) at this time or in connection with any matters or things between the Parties, are all deemed to be globally settled/released and are also included and addressed within the term “Controversy[ies]” as used and defined herein and for purposes of this Agreement, generally; and

**WHEREAS**, the Parties originally asserted claims (in the case of Anderson) and defenses (in the case of the Defendant Group) against each other in the Lawsuit, which claims included, *inter alia*, claims for breach of contract, wrongful termination, unlawful employment practices, retaliation, violations of the Minnesota Whistleblowers Act, statutory wage payment violations, alter-ego, emotional and mental distress, etc., and in respect to all these claims (and any others) arising, *inter alia*, out of all matters and the Controversy between the Parties, each Party has mutually and respectively denied all liability whatsoever to each other as to all allegations made by any opposing Party in the Lawsuit (or otherwise) against them; and

**WHEREAS**, the Parties now desire to compromise and settle globally all matters now or possibly in dispute between them arising out of the occurrences that made the bases of the Parties’ respective claims and possible causes of action relating to the Lawsuit, and the Controversy generally (whether known or unknown) in any way, now or hereafter, in order to avoid the further expense, inconvenience and the uncertainty of further litigation and to buy peace; and

**WHEREAS**, certain representations and promises have also been made and releases given, all being set forth in this Agreement, and all being good and sufficient independent consideration exchanged herein by the Parties for and in support of this Agreement.

**NOW, THEREFORE**, in consideration of and for settlement and mutual global release of the recited and referenced claims herein, the dismissal of the Lawsuit (with prejudice), the mutual release of the Controversy (except as set out herein) in all respects, and all matters as detailed in this Agreement, transfer, conveyance, grant and issuance of all of certain shares of unrestricted and immediately saleable stock in FVW and other monetary and non-monetary considerations set forth or referenced herein, and for the other mutual and independent releases and other considerations herein recited and contained and also the covenants, warranties and representations made, and promises expressed, the receipt, sufficiency and adequacy of all of which considerations are hereby acknowledged and confessed by all Parties, it is hereby agreed by each and every one of these Parties as follows:

**1. The following Monetary Considerations are Due to Anderson from Defendant Group, Upon Closing.**

- A. At Closing [defined below], Defendant Group shall pay all of the mediators' fees incurred in connection with this matter to date, for the two (2) mediation sessions.
- B. At Closing (being 45 days from January 6, 2023, being February 20, 2023), Defendant Group shall pay Anderson an additional \$1,250,000.00 in cash (also sometimes referenced herein as the "Settlement Payment"), above and beyond the prior \$400,000.00 bonus money payment per the prior partial settlement occurring at the first mediation session between the Parties [said settlement agreement attached hereto as Exhibit "A"]. Further:
  - (i) Anderson's counsel has informed Defendant Group's attorneys of an attorneys' fees check to be delivered as part of the \$1,250,000.00 consideration hereunder to Schaefer Halleen, LLC in the amount of \$64,418.60. Of the remaining balance (after that check) of that \$1,250,000.00, the remaining balance shall be allocated to two (2) checks; the first check being 70% (\$829,906.98) of that remaining balance as a payment made payable to Anderson, for which sum she will receive an IRS Form 1099, and, the second check being 30% of the remainder (\$355,674.42) being treated as an IRS Form W-2 payment (again payable to Anderson) with requisite payroll withholdings and with FVW paying the usual/customary employer taxes portion. All checks will be delivered at Closing.
- C. At Closing, a total of 500,000 of unrestricted FVW shares of stock (the "Anderson Consulting Shares") will be granted and issued by FVW under FVW's 2021 Equity Incentive Plan and pursuant to a Registration Statement on Form S-8, SEC File No. 333-262906 ("Form S-8"), filed by FVW with the Securities and Exchange Commission (the "SEC"), without any restrictions on their immediate sale or alienability, to Anderson, provided Anderson enters into an agreement before Closing to provide bona fide services as a consultant to FVW (as required for Anderson's eligibility to receive shares registered on Form S-8), with the term of such consulting agreement to run from date of Closing to July 26, 2023. The shares will be issued to Anderson in book-entry, or uncertificated, form and directly registered in Anderson's name with FVW's transfer agent, or issued in street name by crediting the account of Anderson's broker with the Depository Trust Company pursuant to instructions given/sent from Anderson or her counsel, and directed to FVW's outside securities counsel, Maslon, LLP 3300 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402, Attn: Alan Gilbert, Email at Alan.Gilbert@maslon.com , prior to such issuance.
- D. Contemporaneously with the execution and delivery of this Agreement, each of Novak and Nechio will execute and deliver to FVW an Agreement to Forfeit Shares of Common Stock (the "Forfeiture Agreements") pursuant to which each will agree to forfeit and transfer back to FVW without consideration 250,000 shares of common stock of FVW held by them (a total of 500,000 shares), to enable FVW to issuing the Anderson Consulting Shares to Anderson without subjecting FVW's other stockholders to dilution therefrom (the "Anderson Consulting-related Forfeitures"). The form of Forfeiture Agreement is attached as "Exhibit "B" hereto. The Anderson Consulting-related Forfeitures will be effective upon the Closing. If Anderson revokes or rescinds this Agreement as described in this Paragraph "9", the Forfeiture Agreements and the Anderson Consulting-related Forfeitures will be null and void. FVW's obligation to Anderson to deliver timely to her the 500,000 FVW shares pursuant to paragraph "1.C." above exists and is required hereunder, whether or not Novak and Nechio perform as required (in favor of FVW) in this Paragraph "D".



2. **Other Considerations to Anderson.**

- A. By the date of Closing, Novak will resign as Chairman of FVW's Board of Directors and will remove himself from all management duties with FVW. Within 24 hours after completion of FVW's currently pending capital raising effort, Novak will resign from FVW's Board of Directors. By the date of Closing, Nechio will resign from FVW's Board of Directors. By the date of Closing, FVW will announce that FVW is searching for a new CEO and once a new CEO is hired, Nechio will resign as FVW's interim CEO. FVW may elect to employ Nechio in an advisory capacity to aid in the transition after he resigns as interim CEO.
- B. The Parties agree to the following press releases/narratives, and a letter of reference will be exchanged at Closing (and may be publicly released and exhibited as the Parties may choose), in the exhibits attached as "C", "D" and "E", respectively, hereto.

3. **Acknowledgment Concerning Taxation.** The Parties acknowledge and represent that in the course of negotiations and consideration of this Agreement, no tax advice has been offered or given by any opposing Party, nor the respective opposing Parties' attorneys, and that each Party and their attorneys are relying upon the advice of their own tax consultants, if any, with regard to tax consequences that may arise as a result of the execution of this Agreement.

Anderson understands that, aside from the requisite payroll withholdings that FVW shall make, she is solely responsible for any other taxes, interest, and/or penalties that result from insufficient withholdings as to the Settlement Payment made to her under this Agreement. Anderson agrees that if any government taxing authority should disagree with the Parties' characterization or treatment of the Settlement Payment made under this Agreement, she will defend, indemnify, and hold FVW harmless for any taxes, interest, and/or penalties that result from said Settlement Payment made to her under this Agreement; likewise FVW agrees to cooperate in allowing Anderson to defend against the imposition of same, by such taxing authority.

4. **Submission of Agreed Dismissals.** The Parties hereby agree to submit an Agreed Stipulation of Dismissal with Prejudice in the Lawsuit, contemporaneously after execution hereof at Closing, in the form attached as Exhibit "F" hereto, respectively (with all costs and fees charged to the Parties incurring same). The Parties hereto agree that counsel for Anderson shall submit this document for filing and the Court's signature within five (5) business days after all considerations (including full payment in good funds and with the issuance of the 500,000 FVW shares duly and timely delivered to Anderson or to Anderson's broker pursuant to Anderson's instructions) due at Closing, have all been actually received by Anderson.

5. **Mutual Representations and Warranties.** The Parties also hereby respectively Represent and Warrant to each other the following, as set forth below, that apart from the contents of this Agreement:

- A. Anderson neither knows of, nor owns, nor controls, any continuing live claim on behalf of/by Anderson, against (any of) Defendant Group relating in any way to the Controversy, not hereby released, conveyed, or assigned to Defendant Group herein – unless (specifically) described, specified or excepted hereunder.
- B. Defendant Group neither knows of, nor owns, nor controls, any continuing live claim on behalf of/by any of Defendant Group against Anderson relating in any way to the Controversy, not hereby released, conveyed or assigned to Anderson unless (specifically) described, specified or excepted hereunder.

6. **Defendant Group's Release.** Defendant Group, by each of them executing this Agreement and for the mutual and sufficient considerations provided to each member of the Defendant Group herein, DOES HEREBY, individually and collectively, for each themselves and for and on behalf (where applicable) of its/their respective personal and legal representatives, attorneys (specifically including without limitation: Gregory Stenmoe, Samuel N. Louwagie and Taft Law; Patrick Larkin and Lind, Jensen, Sullivan & Peterson, P.A., and all other experts or other counsel to the extent employed by them in regard to this matter), heirs, executors, administrators, past or present spouses, officers, directors, partners (limited or general), members, managers, employees, agents, insurers, professional employer organizations, representatives, servants, successors and assigns (the "Defendant Group Releasees") Completely Forgive, Release, Acquit and Forever Discharge Anderson and her respective personal and legal representatives, attorneys (specifically including without limitation: James Albert Jennings, Kenneth B. Tomlinson and Erhard & Jennings, P.C.; Lawrence P. Schaefer, Timothy Christensen and Schaefer Halleen, LLC, and all experts or other counsel to the extent employed by them in regard to this matter), heirs, executors, administrators, insurers, past or present spouses, officers, directors, partners (limited or general) members, managers, employees, agents, representatives, servants, any third-party beneficiaries of Anderson's generally, successors and assigns (as most broadly defined herein – with all these being the "Plaintiff Releasees") from and against: the Lawsuit and the Controversy, generally, and any and all claims, causes of actions, demands, liabilities, declarations, breaches of contract, breaches of duty, breaches of fiduciary duty, claims of liabilities, claims of/for torts, civil theft, defamation, fraud, malpractice, unconscionability, damages, specific performance, debts, repayments, reimbursements, benefits, distributions, disgorgements, costs, charges, obligations, expenses, attorneys' fees, indemnities, offsets, losses, promises, agreements, and choses in action of any nature whatsoever relating in any way to the Lawsuit and/or the Controversy, generally, and whether known or unknown, matured or contingent, liquidated or unliquidated, direct or derivative, actual or threatened, patent or latent, or which could have been asserted or which were assertible, known or unknown, by Defendant Group, against Anderson except only for any promises, agreements, rights or obligations arising under this Agreement (and its Exhibits), including but not limited to Anderson's rights to receive all benefits and considerations from this Agreement, which, (as Defendant Group acknowledges and agrees) like this entire Agreement, shall specifically survive the Closing of this Agreement, and which benefits to Anderson, the Parties expressly intend to exclude from any release herein or diminishment hereunder.
7. **Anderson's Releases.** Anderson, by executing this Agreement and in consideration of the receipt of full actual (in good funds) payment and transfer/conveyance/assignment (and delivery) as to/of all the items under Paragraphs "1" and "2" hereof from Defendant Group (or on behalf of Defendant Group), **DOES HEREBY** for herself and for and on behalf (where applicable) of her respective personal and legal representatives, attorneys (specifically including without limitation: James Albert Jennings, Kenneth B. Tomlinson and Erhard & Jennings, P.C.; Lawrence P. Schaefer, Timothy Christensen and Schaefer Halleen, LLC), heirs, executors, administrators, past or present spouses, officers, directors, partners (limited or general), members, managers, employees, agents, representatives, servants, successors and assigns (all these being the "Plaintiff Releasees") Completely Forgive, Release, Acquit and Forever Discharge Defendant Group, and its/their respective personal and legal representatives, attorneys (specifically including without limitation: Gregory Stenmoe, Samuel N. Louwagie and Taft Law; Patrick Larkin and Lind, Jensen, Sullivan & Peterson, P.A., and all other experts or other counsel to the extent employed by them in regard to this matter), heirs, executors, administrators, past or present spouses, officers, directors, partners (limited or general), members, managers, employees, agents, representatives, insurers, professional employer organizations, servants, successors and assigns (as most broadly defined herein – with all these being the "Defendant Group Releasees") generally, from and against:
- A. the Lawsuit and the Controversy, generally, and any and all claims, causes of action, demands, liabilities, declarations, breaches of contract, including but not limited to claims for any bonus(es), Whistleblower claims, alter-ego claims, breaches of duty, breaches of fiduciary duty, claims of liability, claims of/for torts, civil theft, defamation, fraud, malpractice, unconscionability, damages, punitive damages, specific performance, debts, repayments, reimbursements, benefits, distributions, disgorgements, costs, charges, obligations, expenses, attorneys' fees, offsets, losses, promises, agreements, and choses in action of any nature whatsoever relating in any way to the Lawsuit and/or the Controversy, and whether known or unknown, matured or contingent, liquidated or unliquidated, direct or derivative, actual or threatened, patent or latent, or which were threatened or could have been asserted or which were assertible, known or unknown, by Anderson against Defendant Group Releasees, except only for any promises, agreements, rights or obligations arising under this Agreement (and its Exhibits), including but not limited to Defendant Group's right to receive all benefits and considerations from this Agreement, which, (as Anderson acknowledges and agrees) like this entire Agreement, shall specifically survive the Closing of this Agreement, and which benefits to the Defendant Group the Parties expressly intend to exclude from any release herein or diminishment hereunder.
  - B. All claims for any alleged unlawful discrimination, harassment, failure to accommodate, retaliation, interference, reprisal, or other alleged unlawful practices under any federal, state, or local law, statute, ordinance, or regulation, including, without limitation, rights or claims of discrimination, harassment, failure to accommodate, and retaliation under the federal Age Discrimination in Employment Act (ADEA), federal Older Workers Benefit Protection Act (OWBPA), the Family and Medical Leave Act, the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Fair Credit Reporting Act (FCRA), the Worker Adjustment and Retraining Notification (WARN) Act, the Uniform Services Employment and Reemployment Rights Act (USERRA), the Genetic Information Nondiscrimination Act (GINA), the Immigration Reform and Control Act (IRCA), the Minnesota Human Rights Act ("MHRA"), the Minnesota Whistleblower Act, Minnesota Whistleblower protection laws, the Minnesota Equal Pay for Equal Work law, all claims allowed under Minnesota Statute Chapters 177 and 181;
  - C. All claims for any other alleged unlawful employment practices related to Anderson's employment or Anderson's separation from employment arising under any federal, state, or local law, statute, ordinance, or regulation including, without limitation, Sections 1981 and 1983 of the Civil Rights Act of 1866, the Employee Retirement Income Security Act, the Fair Credit Reporting Act or the National Labor Relations Act;

8. **Additional Material Considerations.** The Parties further specifically agree that as part of the express bargained-for material considerations hereunder, that:

- A. **Indemnification.** Defendant Group shall Indemnify and Hold Anderson, Novak, and Nechio Harmless from and to the full extent of Minn. Stat. § 181.970, and under any applicable FVW director and officer insurance/liability policies/coverages (which policies and coverages, Defendant Group warrants and represents remain in full force and effect), and Defendant Group warrants and represents they know of no pending or threatened claims against Anderson.
- B. **Non-Disparagement.** The Parties hereto agreed that they will not hereafter disparage, either verbally or in writing, the other Parties hereto, by any statement or communication which could be reasonably expected to adversely affect any other Party's personal or professional reputation. This obligation of non-disparagement is borne by each Party hereto that is an individual, and FVW shall likewise equally be bound and also hereby binds (and secures performance from) all its present officers and directors of FVW. FVW agrees not to use former officers and directors of FVW to circumvent its non-disparagement obligations herein. Notwithstanding the foregoing, nothing herein prohibits, restricts or limits any Party hereto from disclosing information or otherwise testifying truthfully, in any legal proceeding (or filing), which may include at any court hearing, deposition or trial, and in or as to answers to any interrogatories, admissions, or document requests, whether pursuant to any subpoena or similar legal process, and irrespective of whom may initiate such legal process. Likewise, this non-disparagement prohibition shall not apply to responses by any Party to requests for information as to any agency of State or Federal government, including the SEC, or any stock exchange, or filing before them. In the event any Party hereto is served with process or any information request that might reasonably require the served Party to make (possibly) disparaging comments, the served Party shall seasonably notify the Party regarding/concerning whom such inquiry has been made or testimony or discovery has been requested (unless they are prohibited by law from so doing).

9. **Employee's Legal Rights.**

- A. **Advice to Consult With an Attorney.** This Agreement is a legal document. Anderson has been advised in writing to consult with an attorney prior to executing the Agreement.
- B. **Period to Consider this Agreement.** Anderson was given this Agreement on January \_\_\_, 2022, and Anderson has twenty-one (21) days following that date to consider the offer as expressed, including Anderson's waiver and release of rights and claims of age discrimination under the ADEA, and to decide whether to sign this Agreement. Anderson agrees that any changes to this Agreement, whether they are material or immaterial, do not restart the running of the 21-day consideration period.
- C. **Revocation/Rescission Periods.** Anderson understands that Anderson has the right to revoke her waiver of claims under the ADEA within seven (7) days after the date on which Anderson signs this Agreement. This Agreement shall not become effective or enforceable until the revocation/rescission period has expired without Anderson's revocation or rescission of this Agreement.
- D. **Revocation/Rescission Procedure.** To revoke or rescind, Anderson must put her revocation in writing, and deliver it to FVW by mail within the revocation or rescission period. If Anderson delivers revocation/rescission by mail, it must be: (i) postmarked within the 7-day period to revoke her waiver of claims under the ADEA; (ii) properly addressed as follows to Jim Spellmire at FVW:

Attn: Jim Spellmire, CFO  
11500 Wayzata Blvd. #1147  
Minnetonka, MN 55305

and/or Defendant Group's attorneys at the addresses identified in the attorneys' signature block in this Agreement and (iii) sent by certified mail, return receipt requested.

- E. **Effect of Revocation/Rescission.** If Anderson revokes or rescinds this Agreement as described in this Paragraph "9", Anderson understands that (i) this Agreement is null and void, (ii) the Defendant Group shall have no obligation under this Agreement, (iii) Anderson will not receive the Settlement Payment, Shares in FVW, or other consideration set forth in Paragraphs "1" and "2", or any of the other promises made by Defendant Group in this Agreement, and (iv) the Forfeiture Agreements and the Anderson Consulting-related Forfeitures will be null and void.

10. **Reliance.** The Parties acknowledge and agree that they have entered into this Agreement in reliance upon each of the representations, warranties, covenants and agreements made herein by each other. All Exhibits hereto are material and made a part of this Agreement and survive this Agreement and its Closing, for all purposes.
11. **Time and Effects of Execution.** Time is of the essence in the performance of all covenants, conditions and obligations to be performed in this Agreement. The Parties shall continue to be bound by all the representations and covenants contained in this Agreement and Exhibits hereto, which shall survive the execution and Closing of same. The Mediated Settlement Agreement (i.e., Mediator's Proposal as agreed) between the Parties dated January 6, 2023 (the "Mediated Settlement Agreement" – also referenced herein as the "term sheet") is abandoned and superseded and of no further force nor effect upon execution of this Agreement by all Parties hereto Save And Except the actual receipt of all the consideration to Anderson from Defendant Group, and vice-versa, as required in Paragraphs "1" and "2" hereof, or elsewhere herein.
12. **Mutual Representation.** All Parties hereto in executing and delivering this Agreement mutually agree and represent that they have carefully reviewed this Agreement and that they understand its terms. The Parties further mutually represent, agree and warrant that: they have made a full and complete investigation of the circumstances surrounding this matter, aided by independent attorneys and professionals of their choice; they have full knowledge of all facts involved; they have consulted with their own independent attorneys regarding this Agreement, they sought and received competent legal advice with respect to this Agreement; they each have relied wholly upon their own respective judgment and knowledge and have not been influenced to any extent whatsoever in making this Agreement by any representations or statements made by the other or anyone acting on behalf of the other except as set forth herein; no fraud has been worked upon them in connection herewith; the aforesaid considerations and all the terms hereof are contractual and not merely recitals; the agreements contained herein and the considerations transferred are made to compromise disputed claims, avoid future expenses, business interruptions and travail and uncertainties of litigation and buy peace; all agreements and understandings made at any time between and among the Parties are embodied, expressed and merged herein; the "recitals" and "whereas" clauses contained herein (and all Exhibits hereto) are each hereby made a material contractual part of this Agreement; and, this Agreement (and its Exhibits) state the entire agreement of the Parties hereto and supersede all prior and contemporaneous negotiations and agreements, oral or written, relating to the subject matter of this Agreement and all prior and contemporaneous negotiations and agreements (including the Mediated Settlement Agreement) relating to the subject matter of this Agreement are deemed incorporated and merged into this Agreement or are deemed to have been abandoned if not so incorporated herein and may not be varied or supplemented by any prior or contemporaneous oral or written agreements.
13. **Cooperation.** The Parties and their counsel agree to cooperate with each other in the drafting and execution of such additional documents as are reasonably required to implement and/or effectuate the provisions and spirit of this Agreement.
14. **Any Dispute to Be First Submitted to Mediation.** In the event of any dispute arising out of or related in any way to this Agreement, whether sounding in tort, contract, equity, law, or otherwise, the Parties agree to first submit the dispute to mediation with Ms. Sheila Engelmeier, the mediator who facilitated the Parties' Mediated Settlement Agreement. Only if an impasse is declared, may any Party thereafter file suit to enforce and/or declare same and seek its attorneys' fees and costs for such action to enforce and/or declare.
15. **Remedies.** In the event of a breach or threatened breach by any Party of any provision of this Agreement, that Party hereby consents and agrees that money damages would not afford an adequate remedy and that the Party attempting enforcement of this Agreement shall be entitled to seek a temporary or permanent injunction or other equitable relief against such breach or threatened breach from any court of competent jurisdiction, without the necessity of showing any actual damages, and without the necessity of posting any bond or other security. Any equitable relief shall be in addition to, not in lieu of, legal remedies, monetary damages, or other available relief.
16. **Attorneys' Fees and Costs.** If either party breaches any terms of this Agreement or the continuing obligations referenced in it, to the extent authorized by law, the breaching party will be responsible for payment of all reasonable attorney fees and costs that the non-breaching party incurred in the course of enforcing or declaring the terms of this Agreement, including demonstrating the existence of a breach and any other contract enforcement efforts.

17. **No Waiver.** No claim or right arising out of a breach or default under this Agreement may be discharged by a waiver of that claim or right unless the waiver is made in writing and signed by the Party against whom waiver is alleged. A waiver by any Party of a breach or default of another Party of any provision contained in this Agreement shall not be deemed a waiver of future compliance of such provisions, and such provisions shall remain in full force and effect.
18. **Authority.** Each of the individual persons executing this Agreement on behalf of the Parties hereto, hereby individually (and on behalf of the Party for whom they execute and in all capacities) warrant and represent to the other Parties that they have the full authority to bind the Party(ies) on whose behalf they purport to sign to the terms, warranties, representations and covenants of this Agreement. Each Party hereby further warrants and represents that the interests conveyed, claims, suits, causes of action, rights and/or interests which are the subject matter of the Controversy, and this Agreement, are owned by them, free and clear of all liens, encumbrances and pledges, and have not been assigned, transferred, hypothecated, pledged, conveyed or sold heretofore to any other person.
19. **Counterparts.** This Agreement may be executed in one or more separately signed counterparts (and with signatures by email or facsimile), each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.
20. **Governing Law and Exclusive Venue.** The Parties agree that this Agreement is governed by the laws of the State of Minnesota, enforceable in Hennepin County, Minnesota, and that any litigation, suit, action, counterclaim or proceeding, whether at law or in equity, which arises out of, concerns or relates to this Agreement and its enforcement, shall be brought in any court of competent jurisdiction located in Minneapolis, Hennepin County, Minnesota.
21. **Mutual Drafting for Construction Purposes.** The Parties agree that each Party and each Party's counsel has assisted in drafting, review and preparation of this Agreement, agree that the Agreement is not to be construed against any Party as its drafter, and agree that each Party fully understands and voluntarily accepts each and every provision contained in this Agreement.
22. **Construction and Reformation.** If any provision of this Agreement is held to be inoperative, invalid, or illegal, it is the Parties' intention that all the remaining provisions hereof shall continue to be fully operative and effective insofar as is possible. The Parties further specifically request that as to any Court considering any claimed defective, invalid, overbroad, inoperative or illegal provision hereof (if and when such determination is made), if the Court agrees that such provision or term is as claimed, the Court shall then modify, reform or correct same (to the least extent necessary) such that such term or provision is then fully enforceable against the Party intended.
23. **Survival.** All the provisions of this Agreement shall survive the Closing hereof and shall be enforceable as a contract. Titles and headings of paragraphs are not dispositive as to their contents.
24. **Attribution of Costs.** Except as specifically provided herein, all Parties to this Agreement and the Lawsuit shall bear their own attorneys' fees, expert and valuation fees, costs and expenses.

25. **Notice.** Any notice or communication hereunder must be in writing and given by hand-delivering the same in person, or by Federal Express. Such notice shall be deemed received on the date on which it is hand-delivered or delivered by Federal Express. For purposes of such notice(s), the addresses of the Parties shall be as follows:

If to Anderson:

**ERHARD & JENNINGS, P.C.**  
James Albert Jennings  
Kenneth B. Tomlinson  
1601 Elm Street, Suite 4242  
Dallas, Texas 75201  
Tel: 214-720-4001  
Fax: 214-871-1655  
jjennings@erhardjennings.com  
jajennings@aol.com  
ktomlinson@erhardjennings.com

**AND TO**

**SCHAEFER HALLEEN, LLC**  
Lawrence P. Schaefer  
Timothy Christensen  
412 South Fourth Street, Suite 1050  
Minneapolis, MN 55415  
Tel: 612.294.2600  
Fax: 612.294.2640  
lschaefer@schaeferhalleen.com  
tchristensen@schaeferhalleen.com

If to Defendant Group:

**TAFT LAW**  
Greg Stenmoe  
Samuel N. Louwagie  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
Tel: 612-977-8400  
Fax: 612-977-8650  
gstenmoe@taftlaw.com  
slouwagie@taftlaw.com

**AND TO**

**LIND, JENSEN, SULLIVAN & PETERSON, P.A.**  
Patrick Larkin  
1300 AT&T Tower  
901 Marquette Avenue S.  
Minneapolis, MN 55402  
Tel: 612-333-3637  
Fax: 612-333-1030  
patrick.larkin@lindjensen.com

Any Party may change its address (including email address) for notice by written notice given to the other Party in accordance with this Paragraph. At the same time any notice is given, the Party giving notice hereunder must also send an email to the Party notified and copy the Party's attorney.

26. **Execution/Closing.** The Parties hereto agree that this Agreement will be executed by all signatories hereto, with the obligations (including all documents to be delivered/produced/exchanged) required herein and all written documents (including the Exhibits) confirming (or themselves being) the considerations conveyed, transferred and paid to be exchanged and delivered in final (*i.e.*, fully and properly executed) form to the Parties and/or their respective counsel within forty five (45) days of January 6, 2023, with such hand delivery (or Federal Express delivery by that date, for morning delivery) to be made to Anderson's counsel at the offices of James Albert Jennings, ERHARD & JENNINGS, P.C., 1601 Elm Street, Suite 4242, Dallas, TX 75201, on or before noon of that day. Also, to the extent Anderson must deliver items to other Parties hereto, they will be hand delivered (or via Federal Express) to the appropriate Party (or Party's counsel) on the same date, by that same time. The consummation of these occurrences on or by such date and time, shall be referenced herein generally as the Settlement Date ("Settlement Date" or "Effective Date" or "Closing") and constitute the "Closing" of this Agreement as that term is used herein.
27. **MMSEA Disclosures.** This Settlement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. § 1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms. Anderson warrants that she is not a Medicare beneficiary as of the date of this release. Because Anderson is not a Medicare recipient as of the date of this release, no conditional payments have been made by Medicare.

IN WITNESS WHEREOF, we (all Parties) have executed this instrument on the dates set forth hereinbelow.

**PARTIES – UNDERSTOOD AND AGREED IN ALL RESPECTS AS TO FORM AND SUBSTANCE:**

/s/ Janelle Anderson  
JANELLE ANDERSON

**ACKNOWLEDGMENT**

THE STATE OF TEXAS                   §  
   §  
COUNTY OF COLLIN                 §

**BEFORE ME**, the undersigned, a Notary Public in and for said County and State, on this day personally appeared JANELLE ANDERSON, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed this document for the purposes and considerations and in the capacities therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this 26th day of January, 2023.

/s/ Lama Zeytter  
Notary Public in and for the State of Texas

My Commission Expires: 8-11-2024



FRESH VINE WINE, INC.

By: /s/ James Spellmire  
Print Name: James Spellmire  
As Its: Chief Financial Officer

**ACKNOWLEDGMENT**

THE STATE OF MINNESOTA           §  
   §  
COUNTY OF ITASCA                 §

**BEFORE ME**, the undersigned, a Notary Public in and for said County and State, on this day personally appeared James Spellmire, as Chief Financial Officer of FRESH VINE WINE, INC., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed this document for the purposes and considerations therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this 27 day of January, 2023.

/s/ Christine Marie Schultz  
Notary Public in and for the State of Minnesota

My Commission Expires: January 31, 2024

/s/ Damian Novak  
**DAMIAN NOVAK, INDIVIDUALLY, AND**  
**IN ALL CAPACITIES**

**ACKNOWLEDGMENT**

**THE STATE OF MINNESOTA           §**  
**§**  
**COUNTY OF HENNEPIN           §**

**BEFORE ME**, the undersigned, a Notary Public in and for said County and State, on this day personally appeared the DAMIAN NOVAK, Individually, and in all capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed this document for the purposes and considerations and in the capacities therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this 27th day of January, 2023.

/s/ Cynthia Celest Owens  
Notary Public in and for the State of Minnesota

My Commission Expires: January 31, 2027

/s/ Rick Nechio  
RICK NECHIO, INDIVIDUALLY, AND  
IN ALL CAPACITIES

**ACKNOWLEDGMENT**

THE STATE OF NORTH CAROLINA

§

§

COUNTY OF IREDELL

§

**BEFORE ME**, the undersigned, a Notary Public in and for said County and State, on this day personally appeared RICK NECHIO, Individually, and in all capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed this document for the purposes and considerations therein expressed.

**GIVEN UNDER MY HAND AND SEAL OF OFFICE**, this 27th day of January, 2023.

/s/ Jennifer Elliot  
Notary Public in and for the State of North Carolina

My Commission Expires: 1/28/2023

**APPROVED AS TO FORM ONLY:**

**ERHARD & JENNINGS, P.C.**

James Albert Jennings  
Kenneth B. Tomlinson  
1601 Elm Street, Suite 4242  
Dallas, Texas 75201  
Tel: 214-720-4001  
Fax: 214-871-1655  
jjennings@erhardjennings.com  
jajennings@aol.com  
ktomlinson@erhardjennings.com

By: /s/ James Albert Jennings

James Albert Jennings

**AND**

**SCHAEFER HALLEEN, LLC**

Lawrence P. Schaefer  
Timothy Christensen  
412 South Fourth Street, Suite 1050  
Minneapolis, MN 55415  
Tel: 612.294.2600  
Fax: 612.294.2640  
lschaefer@schaeferhalleen.com  
tchristensen@schaeferhalleen.com

By: /s/ Lawrence P. Schaefer

Lawrence P. Schaefer

**ATTORNEYS FOR PLAINTIFF  
JANELLE ANDERSON  
TAFT LAW**

Gregory Stenmoe  
Samuel N. Louwagie  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, MN 55402  
Tel: 612-977-8400  
Fax: 612-977-8650  
gstenmoe@taftlaw.com  
slouwagie@taftlaw.com

By: /s/ Gregory Stenmoe  
Gregory Stenmoe

**AND**

**LIND, JENSEN, SULLIVAN &  
PETERSON, P.A.**

Patrick Larkin  
1300 AT&T Tower  
901 Marquette Avenue S.  
Minneapolis, MN 55402  
Tel: 612-333-3637  
Fax: 612-333-1030  
patrick.larkin@lindjensen.com

By: /s/ Patrick Larkin  
Patrick Larkin

**ATTORNEYS FOR DEFENDANTS  
FRESH VINE WINE, INC., DAMIAN NOVAK  
AND RICK NECHIO**

**CONSULTING AGREEMENT**

This Consulting Agreement (the “Agreement”) is made to be effective as of January 27, 2023 (the “Effective Date”) by and between Fresh Vine Wine, Inc. (the “Company”), a Nevada domestic corporation, and Janelle Anderson (“Ms. Anderson” or “Consultant”) (the Company and Consultant may individually be referred to herein as “Party” and collectively, as the “Parties”).

**RECITALS**

A. Ms. Anderson was formerly employed with the Company and served as the Company’s Chief Executive Officer.

B. The Company wishes to retain Ms. Anderson, a resident of Dallas, Texas, as an independent contractor to perform management consulting services as requested by an authorized Company designee in consideration for 500,000 unrestricted Company shares of stock.

C. Ms. Anderson wishes to provide management consulting services to the Company on an independent contractor basis, as set out in this Agreement.

**AGREEMENT**

**NOW THEREFORE**, for and in consideration of the recitals and of the mutual covenants, conditions and agreements contained herein, the parties, intending to be legally bound, mutually agree as follows:

**1. Independent Contractor Relationship.** The Company hereby retains Consultant as an independent contractor, and Consultant accepts this engagement, on the terms and conditions contained in this Agreement. During the Consulting Period, Consultant shall not be considered, under this Agreement or otherwise, as being an employee of the Company or as being entitled to the rights and privileges of an employee of the Company because of the Services (as defined below) that Consultant provides. The performance of Services by Consultant does not entitle Consultant to the benefits that are extended to the Company employees, including leave; vacation; holidays; medical, dental, life, or disability insurance; retirement plans; or any other form of employee benefit whatsoever.

**2. Term.** Consultant shall be available and shall provide Services (as defined below) to the Company, from the Effective Date through July 26, 2023 (the “Consulting Period”).

**3. Services.** During the Consulting Period, solely upon written request by the Company and upon reasonable notice, Consultant will be reasonably available in Dallas, Texas, to consult with, advise and assist the Company with respect to management and business matters about which Consultant had knowledge or responsibility during her employment with the Company, and with respect to such additional projects and matters as may be reasonably requested during the Consulting Period by an authorized Company designee. Consultant’s aforementioned services provided to Company are referred to herein as the “Services.” Consultant may determine, in her sole discretion, the means and manner of performing those duties, except as expressly limited by this Agreement. Consultant shall devote such efforts and time as she deems to be reasonably necessary, to perform Services and shall conduct herself at all times in a professional manner with respect to the performance of Services. However, nothing in this Agreement shall be construed to prevent Consultant from performing work for other persons or organizations during the time period in which Consultant is providing Services to the Company or being employed by another person or entity. The only services to be provided hereunder are consulting services. No written work product will be required of her, without Consultant’s express agreement, in advance, in writing.

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**4. Fees.** As compensation for Consultant's services during the Consulting Period, the Company shall issue to Consultant a total of 500,000 unrestricted Company shares of stock under the Company's 2021 Equity Incentive Plan and pursuant to a Registration Statement on Form S-8, SEC File No. 333-262906 ("Form S-8"), filed by the Company with the Securities and Exchange Commission (the "SEC").

**5. Expenses.** Consultant shall be reimbursed for expenses directly related to and reasonably necessary to provide Services for which she submits proper documentation to the Company. The Company shall have no obligation to reimburse Consultant for any expense unless Consultant obtained the express written approval of the Company's Chief Financial Officer or another authorized Company designee before incurring the expense. Consultant shall not purport to commit the Company to any agreement or other obligation.

**6. Taxes.** The Company shall not withhold FICA, income taxes, or any other taxes from the fees due to Consultant under this Agreement. Consultant shall be solely responsible for the payment of any and all taxes that are or may become due from Consultant with respect to the consideration paid to Consultant under this Agreement. Consultant hereby indemnifies and holds harmless the Company for any taxes, interest, or penalties assessed against the Company by any taxing authority as a result of the failure of Consultant to pay any amounts owed by Consultant to the taxing authority under this Agreement. Consultant will reimburse the Company for any such taxes, interest, or penalties that the Company is required to pay.

**7. Compliance with Law.** Consultant shall at all times conduct her business in compliance with applicable laws and in a professional manner. Consultant shall alone be responsible for the conduct of her business and shall not be subject to the control of the Company.

**8. No Authority to Speak For or Bind Company.** Consultant has no authority to speak for, or on behalf of, the Company in any capacity. Consultant has no authority or right to create any obligation on behalf of the Company or to bind the Company in any respect whatsoever. Consultant is not authorized to sign any agreement or contract for any services or products on behalf of the Company.

**9. Confidentiality.** Consultant recognizes that while performing Services under this Agreement she may hereafter have access to confidential or privileged information, including but not limited to, information concerning the Company and its business, customers, distributors, suppliers, officers, directors, and employees. Consultant shall maintain the confidentiality of all information to which Consultant has new access pursuant to this Agreement. Consultant shall ensure that all documents and other confidential or privileged information provided to Consultant under this Agreement are maintained in a manner that protects their confidentiality.

**10. Return of Property and Documents.** All documents and other property that come into Consultant's possession as a result of this Agreement shall be and remain the exclusive property of the Company. Consultant shall return all such documents, including all copies thereof, and tangible property to the Company upon the Company's request.

**11. Entire Agreement.** This Agreement is the complete agreement between the parties hereto with respect to the performance of Services by Consultant during the Consulting Period. This Agreement supersedes all prior oral or written agreements and communications between the parties with respect to the subject matter of this Agreement; however, this Agreement does not supersede, waive, or modify the terms and conditions of the Global Mutual Compromise, Release and Settlement Agreement between these Parties (and others). This Agreement cannot be amended or modified except in a writing signed by the Company and Consultant.

**12. Waiver.** No waiver of any term or provision of this Agreement shall be effective unless set forth in a written document signed by the party charged thereby. Any waiver shall be limited to the circumstance or events specifically referenced in the written waiver document and shall not be deemed a waiver of any other term or provision of this Agreement or of the same circumstance or event upon any recurrence thereof.

**13. Severability.** If any court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the parties desire and agree that the remaining parts of this Agreement shall nevertheless continue to be valid and enforceable.

**14. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and said counterparts constitute one (1) and the same instruments which may be sufficiently evidenced by a counterpart. A facsimile, telecopy, PDF sent via email with scanned or electronic signatures and/or other reproduction of this Agreement may be executed by a Party, and an executed copy of this Agreement may be delivered by a Party by facsimile or similar instantaneous electronic transmission device (e.g., email/PDF) pursuant to which the signature of or on behalf of such Party can be seen, and such execution and delivery shall be considered valid, binding, and effective for all purposes. At the request of either Party, the Parties agree to execute an original of this Agreement as well as any facsimile, telecopy, or other reproduction hereof.

**15. Construction.** Headings are used herein for convenience only and shall have no force or effect in the construction or interpretation of this Agreement. As used in this Agreement, the singular includes the plural and masculine includes the feminine and neuter. This Agreement shall not be construed against the Party drafting it but shall be construed fairly and equitably as though it was the joint product of the Parties.

**16. Governing Law.** This Agreement shall be construed, enforced and interpreted pursuant to the internal substantive law and not the law of conflicts, of the State of Minnesota. The Parties consent to the personal jurisdiction of the courts located in the State of Minnesota, and waive any argument that such a forum is not convenient.



[THIS AGREEMENT MAY BE SIGNED IN COUNTERPARTS]

IN WITNESS WHEREOF, the Parties have each executed this Consultant Agreement as of the date shown below.

DATED: January 27, 2023

CONSULTANT: Janelle Anderson, individually

By: /s/ Janelle Anderson

DATED: January 27, 2023

COMPANY: FRESH VINE WINE, INC.

By: /s/ James Spellmire

[*Print*] / James Spellmire

Its: CFO

**FORM OF  
AGREEMENT TO FORFEIT SHARES OF COMMON STOCK**

[Damian Novak]/[Rick Nechio]  
11500 Wayzata Blvd. #1147  
Minnetonka, MN 55305

\_\_\_\_\_, 2023

Dear Mr. Novak:

The purpose of this agreement (this “Agreement”) is to confirm our discussions and agreement that [Damian Novak]/[Rick Nechio] (the “Stockholder”) has agreed to forfeit to Fresh Vine Wine, Inc., a Nevada corporation (the “Company”), 250,000 shares of common stock, par value \$0.001 per share (“Common Stock”), of the Company, subject to the terms and conditions set forth in this Agreement.

The Company is entering into a Global Mutual Compromise, Release and Settlement Agreement with Janelle Anderson (the “Settlement Agreement”) pursuant to which, among other things, (i) Ms. Anderson is agreeing to dismiss an action pending in Hennepin County District Court, captioned Janelle Anderson v. Fresh Vine Wine, Inc., Damian Novak, and Rick Nechio, Court File No. 27-CV-22-11491 (the “Lawsuit”) in exchange for, among other things, the Company making a settlement payment to Ms. Anderson in the amount of \$1.25 million, and (ii) the Company and Ms. Anderson are agreeing to enter into a consulting arrangement (the “Consulting Arrangement”) pursuant to which Ms. Anderson would provide certain consulting services to the Company in exchange for the Company granting and issuing to Ms. Anderson 500,000 shares of the Common Stock (the “Shares”) from the Company’s 2021 Equity Incentive Plan (the “Grant”).

In order to prevent dilution to the Company’s stockholders in connection with the Grant, the Stockholder hereby irrevocably forfeits to the Company, for no consideration, 250,000 shares of Common Stock of the Company, effective upon the Grant and contingent upon the occurrence thereof

The Stockholder hereby irrevocably appoints the Chief Financial Officer or Secretary of the Company, with full power of substitution, to transfer the shares of Common Stock set forth above on the books and records of the Company in accordance with the terms of this Agreement.

The Company and the Stockholder acknowledge that the shares of Common Stock to be forfeited by the Stockholder under this Agreement represents 50% of the total shares of Common Stock to be issued by the Company to Ms. Anderson pursuant to the Grant, and that the Company is entering into an agreement with [Rick Nechio]/[Damian Novak] providing for the forfeiture by [Rick Nechio]/[Damian Novak] of the remaining 50% of the total shares of Common Stock to be issued by the Company to Ms. Anderson pursuant to the Grant.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nevada, regardless of the laws that might otherwise govern under applicable principles of conflicts of law. This Agreement may be executed and delivered by electronic signature and in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

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IN WITNESS WHEREOF, the parties have executed this Agreement to Forfeit Shares of Common Stock effective as of the date first set forth above.

FRESH VINE WINE, INC.

By: \_\_\_\_\_  
Name: James Spellmire  
Title: Chief Financial Officer

STOCKHOLDER:  
\_\_\_\_\_  
[Damian Novak]/[Rick Nechio]

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