SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement" or "Settlement Agreement"), dated as of September 4, 2020, and as amended on October 25, 2022, is made and entered into by and among the following Parties: (i) Saul Hymes, Ilana Harwayne-Gidansky, Edgar Fierro, and Joan Lewis ("Plaintiffs"), individually and on behalf of the Settlement Class, by and through the undersigned counsel of record; and (ii) Earl Enterprises Holdings, Inc. ("Earl Enterprises" or "Defendant"), by and through the undersigned counsel of record.

Article I. RECITALS

1.01 Plaintiffs Saul Hymes and Ilana Harwayne-Gidansky brought this class action case against Earl Enterprises Holdings, Inc. ("Defendant" or "Earl Enterprises") on April 3, 2019 in the United States District Court for the Middle District of Florida, **No. 6:19-cv-644-Orl-41GJK**. (Doc. 1). Subsequently, on May 23, 2019, Plaintiffs Edgar Fiero and Joan Lewis filed a complaint covering the same subject matter in *Fierro v. Earl Enterprises Holdings, Inc.*, **No. 6:19-cv-974 (M.D. Fla.)**. Further, the Parties agreed to consolidate these matters into one action (the "Litigation"), (Doc. 25), which the United States District Court for the Middle District of Florida granted on August 5, 2019. (Doc. 40). To this end, Plaintiffs filed an amended complaint on August 9, 2019 (Doc. 41), and a second amended complaint on September 4, 2020.

1.02 In the Amended Class Action Complaint and Second Amended Class Action Complaint (together with the original complaint in this action and the original complaint filed in the *Fierro* matter, the "Complaints"), Plaintiffs asserted claims for breach of implied contract, negligence, negligence *per se*, unjust enrichment, breach of confidence, violations of Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq* ("FDUTPA"), and violations of California Civil Code §§ 1798.80, *et seq*. (the "CRA"), California Civil Code § 1798.82

(the "California Breach Notification Law"), and California Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq* ("UCL"). These claims arise from third-party criminal attacks on the point of sale systems of certain Earl Enterprises' restaurants (the "Data Breach Incident," as further defined below).

1.03 On July 15, 2021, after the Court *sua sponte* expressed concerns about its jurisdiction under Article III of the United States Constitution, counsel Plaintiffs and Earl Enterprises agreed to dismiss the consolidated action in the United States District Court for the Middle District of Florida and continue their negotiations in state court. Plaintiffs then filed their Class Action Complaint in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida (the federal and state cases are collectively referred to as the "Litigation").

1.04 Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaints, have merit. Plaintiffs and Plaintiffs' Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Earl Enterprises through motion practice, trial, and potential appeals. They have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation, and the financial state of the restaurant industry in the wake of COVID-19 crisis. Plaintiffs' Counsel are highly experienced in class action litigation, particularly of regarding the type of claims here, and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Settlement Class.

1.05 Earl Enterprises denies all material allegations of the Complaints. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Earl Enterprises has agreed to settle this litigation on the terms set forth in this Agreement, subject to Court approval.

1.06 This Agreement resulted from good faith, arm's-length settlement negotiations, including a full-day mediation session before Rodney Max, Esq. Earl Enterprises provided informal discovery concerning the nature of the information taken, the responses Earl Enterprises has taken based on credit, debit, and payment card processor's requirements, and was also forthcoming about its current financial and corporate affairs.

1.07 Plaintiffs' Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in this settlement and how best to serve the interests of the putative class in the Litigation. Based on this investigation and the negotiations described above, Plaintiffs' Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this litigation, that the payment card numbers leaked onto the Dark Web did not match the zip code for those payment cards but rather the location of the restaurant at which they were used, the financial status of the restaurant industry due to the recent COVID-19 crisis, and the substantial benefits to be received by the Settlement Class pursuant to this Agreement, that a settlement with Earl Enterprises on the terms set forth in this Agreement is fair, reasonable, adequate and in the best interests of the putative class.

1.08 The Parties understand, acknowledge, and agree that the execution of this Agreement constitutes the settlement and compromise of disputed claims. This Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Agreement and is not an admission of wrongdoing or liability on the part of any of the Parties to this

Agreement. It is the Parties' desire and intention to effect a full, complete and final settlement and resolution of all existing disputes and claims as set forth herein.

1.09 The settlement contemplated by this Agreement is subject to preliminary and final approval by the Court, as set forth herein. This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all claims and causes of action asserted, or that could have been asserted, against Earl Enterprises and the Released Persons (as defined below) arising out of or relating to the Data Breach Incident, by and on behalf of the Plaintiffs and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other consumers and putative classes of consumers originating, or that may originate, in jurisdictions in the United States.

Article II. DEFINITIONS

As used in the Settlement Agreement, the following terms have the meanings specified below:

2.01 "Approved Claims" means Settlement Claims completed using a Claim Form found to be valid by and in an amount approved by the Settlement Administrator.

2.02 "Claims Administration" means the processing of Claim Forms received from Settlement Class Members and the processing of payment of Approved Claims by the Settlement Administrator.

2.03 "Claims Deadline" means the deadline by which Settlement Class Members must submit any Settlement Claims; Settlement Claims submitted after the Claims Deadline will not be timely and will not qualify for approval as set forth in ¶ 3.05 and Article XII and will be rejected. The Claims Deadline shall be set by the Court in the Preliminary Approval Order. The parties

propose a Claims Deadline that is the 90th day after the commencement of the Notice Program pursuant to Article VII.

2.04 "Claim Form" shall mean the claim form attached as Exhibit D, or a claim form approved by the Court that is substantially similar to Exhibit D.

2.05 "Claims Period" shall mean the time for Settlement Class Members to submit claims, running from the commencement of the Notice Program through the Claims Deadline.

2.06 "Class Counsel" means John A. Yanchunis and Ryan J. McGee of Morgan & Morgan Complex Litigation Group, Matthew M. Guiney and Carl Malmstrom of Wolf Haldenstein Adler Freeman & Herz, LLP, Mark S. Reich and Courtney Maccarone of Levi & Korsinsky, LLP, and Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP.

2.07 "Costs of Settlement Administration" means all actual costs associated with or arising from Claims Administration and the Notice Program as set forth in Article VII. The Costs of Settlement Administration shall be paid from the Settlement Fund to the Settlement Administrator.

2.08 "Data Breach Incident" means the third-party criminal cyberattacks of certain Earl Enterprises restaurants involving malware variants targeting customers' payment card information that began in May 2018 and that Earl Enterprises announced on March 29, 2019, and that is the subject of the Litigation and Complaints.

2.09 "Effective Date" means the first date by which all of the events and conditions specified in ¶ 13.01 herein have occurred and been met.

2.10 "Judgment" means a final order and judgment rendered by the Court that, among other things, finally approves the Settlement Agreement and is consistent with ¶ 6.02.

2.11 "Parties" means, collectively, Earl Enterprises and Representative Plaintiffs, individually and on behalf of the Settlement Class.

2.12 "Personal Information" means information that is or could be used, whether on its own or in combination with other information, to identify, locate, or contact a person, and further includes, without limitation, names, addresses, payment card numbers, expiration dates, security and service codes, and any other payment card related information.

2.13 "Preliminary Approval Order" means the order preliminarily approving the Settlement Agreement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of or materially in the form of the proposed Preliminary Approval Order attached as Exhibit A.

2.14 "Relevant Period" means the time period beginning from May 23, 2018 through March 18, 2019.

2.15 "Released Persons" means Earl Enterprises Holdings, Inc., Planet Hollywood International Inc., Earl of Sandwich (USA), LLC, Buca, LLC, Chicken Guy, LLC, OCS Restaurant Holdings, LLC, together with their current and former parents, subsidiaries, affiliated companies, and divisions, whether indirect or direct; the predecessors and successors of any of the above; and the past, present, and future directors, officers, employees, principals, agents, attorneys, shareholders, advisors, insurers, reinsurers, assigns, representatives, and administrators of any of the above.

2.16 "Released Claims" shall mean any and all claims, rights, rights of set-off and recoupment, demands, actions, obligations, and causes of action of any and every kind, nature, and character, known and unknown (and specifically including without limitation all Unknown Claims), including without limitation, negligence, negligence per se, breach of contract, breach of

implied contract, breach of fiduciary duty, breach of confidence, invasion of privacy, misrepresentation (whether fraudulent, negligent, or innocent), unjust enrichment, bailment, wantonness, failure to provide adequate notice pursuant to any breach notification statute or common law duty, any federal, state, or local statutory or regulatory claims, including, but not limited to, pursuant to consumer protection laws, unfair and deceptive trade practice laws, and further including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys' fees, costs, and expenses, pre-judgment interest, credit monitoring services, the creation of a fund for future damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that any Settlement Class Member has, has asserted, could have asserted, or could assert against any of the Released Persons based on, relating to, concerning, or arising out of the Data Breach Incident (including but not limited to the theft or compromise of Personal Information) or the allegations, facts, or circumstances described in the Litigation and/or Complaints.

2.17 "Plaintiffs" means Saul Hymes, Ilana Harwayne-Gidansky, Edgar Fierro, and Joan Lewis.

2.18 "Settlement Agreement" or "Agreement" means this agreement.

2.19 "Settlement Claim(s)" means a claim or request for settlement benefits as provided for in Article III of this Settlement Agreement.

2.20 "Settlement Administrator" means Postlethwaite & Netterville, as agreed by the Parties, which is experienced in formulating and effectuating notice programs and administering class action claims, generally and specifically those of the type provided for and made in data breach litigation.

2.21 "Settlement Class" means all residents of the United States whose Personal Information was exposed or potentially exposed as a result of the Data Breach Incident. The Settlement Class specifically excludes: (i) Earl Enterprises and its officers and directors; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the Judge or Magistrate Judge to whom the action is assigned and, any member of those Judges' staffs or immediate family members; and (iv) any other person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity or occurrence of the Data Breach Incident or who pleads *nolo contendere* to any such charge.

2.22 "Settlement Class Member" and "Settlement Class Members" mean all persons residing in the United States who fall within the definition of the Settlement Class.

2.23 "Unknown Claims" means any of the Released Claims that any Settlement Class Member, including any Representative Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs expressly shall have, and each of the other Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, Montana Code Ann. § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified

Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Settlement Class Members, including Plaintiffs, and any of them, may hereafter discover facts in addition to, or different from, those that they, and any of them, now know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs expressly shall have, and each other Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, upon the Effective Date, fully, finally and forever settled and released any and all Released Claims. The Settling Parties acknowledge, and Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

2.24 "Earl Enterprises" means Earl Enterprises Holdings, Inc.

Article III. MONETARY RELIEF

3.01 No later than thirty (30) days following the entry of an order preliminarily approving the settlement and ordering notice to the class, Earl Enterprises agrees to fund a non-reversionary Settlement Fund in the amount of $650,000.00, from which all monetary relief; Costs of Settlement Administration; attorney's fees, costs, and expenses; and service awards shall be paid. These monies shall be paid into a Qualified Settlement Fund ("QSF") to be administered by the Settlement Administrator.

3.02 Claim A - Undocumented but Attested Expense Reimbursement. All Settlement Class Members who submit a valid Settlement Claim using the Claim Form, which is attached as

Exhibit D to this Settlement Agreement and may be completed electronically, who attest that they used a payment card at an affected Earl Enterprises location during the Data Breach's Relevant Period and spent material time prior to the date this Settlement Agreement is filed with the Court taking action to review financial documents, cancel payment cards, or to otherwise mitigate any potential fraud or identity theft as a result of the Data Breach Incident, but did not have any monetary damages, are eligible to receive two (2) Earl Enterprises promotional cards in the amount of $10.00 each for dining at either Planet Hollywood or Buca di Beppo restaurants (class members will need to select either Planet Hollywood or Buca di Beppo at the time they submit their claim). The promotional cards shall be subject to standard terms, cannot be combined, and shall have an expiration date at least eighteen (18) months following final approval. These promotional cards will not be funded from or otherwise be counted against the Settlement Fund; Earl Enterprises agrees to provide (through and administered by the Settlement Administrator) these promotional cards at Earl Enterprises' sole and exclusive expense.

3.03 Claim B - Documented Expense Reimbursement. All Settlement Class Members who submit a valid Settlement Claim using the Claim Form together with supporting documentation are eligible to receive reimbursement for documented out-of-pocket expenses that were incurred as a result of the Data Breach Incident for one or more of the following, not to exceed a total of $5,000.00 per Settlement Class Member: (i) costs and expenses spent addressing identity theft or fraud; (ii) losses caused by restricted access to funds (*i.e.*, costs of taking out a loan, ATM withdrawal fees); (iii) preventative costs including purchasing credit monitoring, placing security freezes on credit reports, or requesting copies of credit reports for review; (iv) late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, and/or card cancellation or replacement fees; (v) unauthorized charges on credit or debit card that the

Settlement Class Member sought to have the card issuer reverse but that were not reimbursed; and (vi) other documented losses incurred as a result of the Data Breach Incident and that were not reimbursed; and (vii) up to four hours of documented time spent for personal investigation and remediation relating to the Data Breach Incident (calculated at the rate of $20.00 per hour). To be eligible for reimbursement the Settlement Class Members' documentation must show that the expenses were incurred prior to the date this Settlement Agreement is filed with the Court. Settlement Class Members filing a claim must verify on the Claim Form that the expenses they are seeking were actually incurred as a result of the Data Breach Incident and that they have not otherwise been reimbursed for such expenses.

3.04 Claim Form and Documentation:

a. A Settlement Class Member can only submit a claim under either ¶ 3.02 or ¶ 3.03, not both.

b. Settlement Class Members seeking reimbursement under ¶¶ 3.02 or 3.03. must complete and submit a written Claim Form to the Settlement Administrator, postmarked (or submitted electronically in accordance with the requirements for electronic submission of a Claim Form) on or before the Claims Deadline, which the Parties propose shall be the 90th day after the commencement of the Notice Program as set forth in Article VII.

c. As part of the proof of Claim, Settlement Class Members seeking reimbursement under ¶ 3.03 must submit documentation reflecting use of a payment card at an affected restaurant during the Data Breach Incident, which could include, but is not limited to: a receipt from an Earl Enterprises restaurant reflecting payment by a payment card during the Data Breach Incident's Relevant Period; a payment card statement reflecting a

charge at an affected restaurant during the Data Breach Relevant Period; or, notification from a bank or financial institution that a payment card was compromised as a result of the Data Breach Incident.

d. Settlement Class Members seeking reimbursement for expenses or losses described in ¶ 3.03 must complete and submit the appropriate section of the Claim Form to the Settlement Administrator, together with proof of such losses.

e. Failure to provide supporting attestation and documentation as requested on the Claim Form shall result in denial of a claim.

f. If a claim submitted pursuant to ¶ 3.03 is denied but the Settlement Class Member has submitted a valid proof of having dined at an affected restaurant during the Data Breach Relevant Period as set forth in ¶ 3.04(c), the claim shall be treated as if it was submitted under ¶ 3.02 and the Settlement Class Member shall receive the compensation provided under ¶ 3.02.

3.05 Claims Process. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all information required to complete the Claim Form by the Claims Deadline, including any documentation that may be necessary to reasonably support the expenses described in ¶ 3.03; and (3) the information submitted would lead a reasonable person to conclude, for a Settlement Claim for Expense Reimbursement submitted under ¶ 3.03, that the alleged expenses plausibly arose from the Data Breach Incident ("Facially Valid"). The Settlement Administrator may, at any time, request from the claimant, in writing, additional information ("Claim Supplementation") as the Settlement Administrator may reasonably require in order to

evaluate the Settlement Claim, e.g., documentation requested on the Claim Form and information regarding the claimed losses.

a. Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is Facially Valid, the Settlement Administrator shall request additional information (i.e., Claim Supplementation) and give the claimant 14 days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within 7 days after the Claims Deadline. In the event of unusual circumstances interfering with compliance during the 14-day period, the claimant may request and, for good cause shown (*e.g.*, illness, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the 14-day deadline in which to comply; however, in no event shall the deadline be extended to later than 30 days after the Effective Date. If the defect is not cured, then the Settlement Claim will be deemed invalid and there shall be no obligation to pay the Settlement Claim.

b. Following receipt of additional information requested as Claim Supplementation, the Settlement Administrator shall have 14 days to accept, in whole or lesser amount, or reject each Settlement Claim. If, after review of the Settlement Claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a Settlement Claim is Facially Valid, then the Settlement Claim shall be paid as set forth in ¶ 3.07 to the extent that the Settlement Administrator finds the Settlement Claim to be valid. If the Settlement Claim remains invalid because the claimant does not provide the requested information needed to complete the Claim Form and evaluate the Settlement Claim, then the Settlement Administrator may reject the Settlement Claim without any further action.

3.06 Settlement Expenses. All of the costs associated with settlement administration, including the expenses of the Settlement Administrator, and for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of such notice, shall be paid from the Settlement Fund. Attorneys' fees, costs, and expenses of Plaintiffs' Counsel, and service awards to Plaintiffs, shall be paid from the Settlement Fund as set forth in Article XI below in the amounts approved by the Court. Together these expenses are referred to herein as the "Settlement Expenses."

3.07 Payment of Claims. By 30 days after the Effective Date, the Settlement Administrator shall calculate the total amount of valid claims submitted under ¶ 3.03. If after payment of the Settlement Expenses, the amount of valid claims submitted under ¶ 3.03 exceeds the amount remaining in the Settlement Fund, each valid claim submitted under ¶ 3.03 shall be reduced *pro rata*.

3.08 *Cy Pres* Distribution of Any Remaining Funds. To the extent that any funds remain in the Settlement Fund after all Settlement Expenses and all valid claims submitted under ¶ 3.03 have been paid, such funds shall be given to Feeding America.

Article IV. REMEDIAL MEASURES

4.01 Earl Enterprises agrees to adopt, continue, or maintain the following data security measures (or better measures) following the execution of the Settlement Agreement:

a. Implement an EMV/P2PE credit card solution for card-present transactions;

b. Implement an intrusion prevention system and an intrusion detection system;

c. Develop an attendance required security awareness training program to educate employees about computer security, corporate policies and procedures, and the most prevalent security threats;

d. Implement file integrity monitoring (FIM) to test operating systems, databases, and application files for tampering;

e. Promptly comply with Payment Card Industry Data Security Standard (PCI-DSS).

4.02 The injunctive relief set forth in Paragraph 4.01 shall be in effect for a period of three (3) years following the Effective Date.

4.03 The Parties agree, and hereby stipulate, that Plaintiffs and Plaintiffs' Counsel were a motivating factor for remedial measures that Earl Enterprises will take or has taken, and which Earl Enterprises will continue to implement as described above.

Article V. CONFIRMATORY DISCOVERY

5.01 Earl Enterprises agrees to provide confirmatory discovery as to the remedial measures undertaken after the Data Breach Incident. The Parties agree that such confirmatory discovery shall take the form of a sworn declaration attesting to the remedial measures to date, including the development, implementation, and cost of such measures.

5.02 Earl Enterprises agrees to provide to Plaintiffs' Counsel an additional sworn declaration from its Chief Financial Officer attesting generally to its current ability to continue operating during the pandemic.

Article VI. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.01 As soon as practicable after the execution of the Settlement Agreement, Plaintiffs' Counsel shall submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement with the Court requesting entry of a Preliminary Approval Order in the form attached hereto as Exhibit A, or an order substantially similar to such form, requesting, *inter alia:*

(i) certification of the Settlement Class for settlement purposes only;

(ii) preliminary approval of the Settlement Agreement;

(iii) appointment of John A. Yanchunis and Ryan J. McGee of Morgan & Morgan Complex Litigation Group, Matthew M. Guiney and Carl Malmstrom of Wolf Haldenstein Adler Freeman & Herz, LLP, Mark S. Reich and Courtney Maccarone of Levi & Korsinsky, LLP, and Gayle M. Blatt of Casey Gerry Schenk Francavilla Blatt & Penfield, LLP, as Class Counsel;

(iv) appointment of the Plaintiffs as Settlement Class representatives;

(v) approval of the Notice Program, including the Notice Plan set forth in the Declaration of Brandon Schwartz Regarding Proposed Notice Program;

(vi) approval of a publication notice form ("Publication Notice") substantially similar to the one attached hereto as Exhibit B and long form notice ("Long Notice") substantially similar to the one attached hereto as Exhibit C, which together shall include a fair summary of the Parties' respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making Settlement Claims to the extent contemplated herein, and the date, time and place of the final fairness and approval hearing;

(vii) appointment of a Settlement Administrator; and

(viii) approval of a claim form substantially similar to that attached hereto as Exhibit D.

6.02 The proposed Judgment that shall be filed with the motion for final approval shall be in a form as set forth below and as agreed upon by Earl Enterprises and Class Counsel. Such proposed Judgment shall, among other things:

(i) Determine that the Settlement Agreement is fair, adequate, and reasonable;

(ii) Finally certify the Settlement Class for settlement purposes only;

(iii) Determine that the Notice Program satisfies due process requirements;

(iv) Dismiss all claims in the Complaint with prejudice;

(v) Bar and enjoin the any Settlement Class Members who did not timely opt out in accordance with the requirements of the Settlement Agreement from asserting any of the Released Claims; and

(vi) Release and forever discharge Earl Enterprises and the Released Persons from the Released Claims, as provided for in this Settlement Agreement.

Article VII. NOTICE PROGRAM

7.01 Upon entry of the Preliminary Approval Order, the Settlement Administrator shall cause notice to be disseminated to the Settlement Class pursuant to the Preliminary Approval Order and Article VII of this Settlement Agreement (the "Notice Program"), and in order to comply with all applicable laws, including, but not limited to the Due Process clause of the United States Constitution and FLA. R. CIV. P. 1.220, and be effectuated pursuant to provisions set forth below, the costs of which shall be Costs of Settlement Administration.

7.02 Notice shall be provided to Settlement Class Members via publication notice and notice on a dedicated settlement website.

a. Within 21 days after the Preliminary Approval Order, Publication Notice, as set forth in Exhibit B, shall be provided to Settlement Class Members in accordance with the Notice Plan set forth in the Declaration of Brandon Schwartz Regarding Proposed Notice Program.

b. Within 21 days after the Preliminary Approval Order, the Settlement Administrator shall establish a dedicated settlement website and shall maintain and update the website throughout the Claims Period, with the Publication Notice, Long Notice, and Claim Form

approved by the Court, as well as this Settlement Agreement. A toll-free help line shall be made available to address Settlement Class Members' inquiries. The Settlement Administrator also will provide copies of the forms of Publication Notice, Long Notice, and Claim Form approved by the Court, as well as this Settlement Agreement, upon request.

7.03 The Notice Program shall be subject to approval by the Court as meeting constitutional due process requirements.

7.04 The Long Notice, Publication Notice, and Claim Form approved by the Court may be adjusted by the Settlement Administrator, respectively, in consultation and agreement with the Parties, as may be reasonable and necessary and not inconsistent with such approval.

7.05 Prior to the final fairness and approval hearing, Lead Counsel and Earl Enterprises counsel shall cause to be filed with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to complying with the Court-approved Notice Program.

7.06 The Notice Program shall be deemed to commence 30 days following entry by the Court of a Preliminary Approval Order in the form attached hereto as Exhibit A, or an order substantially similar to such form.

Article VIII. OPT-OUT PROCEDURES

8.01 Each Settlement Class Member wishing to opt out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated Post Office box established by the Settlement Administrator or submitted electronically on the Settlement Website. The written opt out notice must clearly manifest a person's intent to be excluded from the Settlement Class.

a. The written opt out notice must include the individual's name and address; a statement that he or she has dined at an affected restaurant within the Relevant Period and wants to be excluded from the Settlement Class; and the individual's signature.

b. To be effective, written opt out notice must be postmarked no later than 120 days after the Preliminary Approval date.

c. The Settlement Administrator shall provide the Parties with copies of all completed opt-out notifications, and a final list of all who have timely and validly excluded themselves from the Settlement Class, which Class Counsel may move to file under seal with the Court no later than 10 days prior to the final fairness and approval hearing.

8.02 No person may request to be excluded from the Settlement Class through "mass" or "class" opt-outs.

8.03 All persons who submit valid and timely notices of their intent to be excluded from the Settlement Class shall not receive any benefits of or be bound by the terms of this Settlement Agreement.

8.04 All persons falling within the definition of the Settlement Class who do not submit valid and timely notices of their intent to be excluded from the Settlement Class shall be bound by the terms of this Settlement Agreement and the Judgment entered thereon.

8.05 If more than one thousand (1,000) Settlement Class Members timely and validly request exclusion, then Earl Enterprises may, in its sole discretion, at any time on or before ten (10) calendar days after the deadline to submit an opt out notice set forth in ¶ 8.01(b), notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. If this Settlement Agreement is terminated, it will be deemed null and void ab initio and the provisions in ¶ 13.03 shall apply.

Article IX. OBJECTION AND COMMENT PROCEDURES

9.01 Any Settlement Class Member may comment in support of or in opposition to the Settlement and may do so in writing, in person, or through counsel, at his or her own expense, at the Fairness Hearing.

9.02 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of all counsel representing the objector; (v) a statement confirming whether the objector intends to personally appear and/or testify at the final fairness and approval hearing; and, (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation).

9.03 To be timely, written notice of an objection in the appropriate form must be postmarked to the Clerk of the Court no later than 120 days after the Preliminary Approval date.

9.04 Except upon a showing of good cause, any Settlement Class Member who fails to substantially comply with the requirements for objecting in ¶¶ 9.02 and 9.03 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of ¶ 9.02. Without limiting the foregoing, any challenge to the Settlement Agreement, the final order approving this Settlement Agreement,

or the Judgment to be entered upon final approval shall be pursuant to appeal under the Florida Rules of Appellate Procedure and not through a collateral attack.

Article X. PLAINTIFFS' AND SETTLEMENT CLASS MEMBERS' RELEASES

10.01 Upon the Effective Date, each Settlement Class Member, including Plaintiffs, shall be deemed to have, and by operation of the Judgment shall have, completely, fully, finally, irrevocably, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum in which any of the Released Claims are asserted.

10.02 It is the intent of the Parties that this Release shall not be considered, interpreted, or construed to prevent Settlement Class Members from pursuing claims related to the Data Breach Incident against any person who is not a Released Person.

10.03 Upon the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, Plaintiffs will be deemed to have fully, finally, and forever completely released, relinquished, and discharged the Released Persons from any and all past, present and future claims, counterclaims, lawsuits, set-offs, costs, expenses, attorneys' fees, losses, rights, demands, charges, complaints, actions, suits, causes of action, obligations, debts, contracts, penalties, damages, or liabilities of any nature whatsoever, known, unknown, or capable of being known, in law or equity, fixed or contingent, accrued or unaccrued, matured or not matured, all from the beginning of the world until today. Plaintiffs agree that they are expressly waiving and

relinquishing to the fullest extent permitted by law (a) the provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which provides:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

and (b) any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, that is similar, comparable, or equivalent to Section 1542 of the California Civil Code.

Article XI. PROPOSED CLASS COUNSEL'S ATTORNEYS' FEES, COSTS, AND EXPENSES; AND SERVICE AWARD TO REPRESENTATIVE PLAINTIFFS

11.01 The Parties did not negotiate the payment of the Plaintiffs' attorneys' fees, costs, expenses and/or service award to Plaintiffs, as provided for in ¶¶ 11.02 and 11.03, until after the substantive material terms of the settlement had been agreed upon, other than that Earl Enterprises would pay reasonable attorneys' fees, costs, and expenses, and a service award to Plaintiffs as may be agreed to by Earl Enterprises and Plaintiffs' Counsel and/or as ordered by the Court. Earl Enterprises and Plaintiffs' Counsel then negotiated and agreed as follows:

11.02 Plaintiffs' Counsel will request up to $195,000.00 from the Court for their attorneys' fees, costs, and expenses. Earl Enterprises agrees not to object to this request, and that the amount the Court awards to Class Counsel in attorneys' fees, costs, and expenses shall be paid out of the Settlement Fund.

11.03 Class Counsel will request from the Court a service award for Plaintiffs in the amount of $2,500.00 each. Earl Enterprises agrees not to object to this request, and that the amount the Court awards to Plaintiffs as a service award up to and including $2,500.00 each shall be paid

out of the Settlement Fund. Plaintiffs' agreement to settle this case is in no way dependent on the payment of a service award.

11.04 Plaintiffs' Counsel shall be entitled to the payment of the Court-approved amount of attorneys' fees, costs, expenses, and service awards to Plaintiffs to an account established by Plaintiffs' Counsel within thirty (30) days after the entry of an order of Final Approval, regardless of any appeal that may be filed or taken by any Class Member or third party. In the event that the final approval order and final judgment are not upheld on appeal and, if only a portion of fees, costs, or expenses is upheld, Plaintiffs' Counsel will refund any amount of such awards not upheld on appeal or, if needed, Plaintiffs' Counsel and counsel for Earl Enterprises will return to the Court to further discuss how to distribute this residual amount. Such a refund would also include interest on the amount refunded, based on the prevailing Federal Reserve Interest Rate at the time the attorneys' fees, costs, and expenses were awarded by the Court.

11.05 Plaintiffs' Counsel shall thereafter distribute the award of attorneys' fees, costs, and expenses among Plaintiffs' Counsel and service award to Plaintiffs consistent with ¶¶ 11.02 and 11.03. If this Settlement Agreement is terminated or otherwise does not become final (e.g., the Effective Date does not occur), Earl Enterprises shall have no obligation to pay attorneys' fees, costs, expenses, or Service Awards and shall only be required to pay from the Settlement Fund the costs and expenses related to notice and administration that were already incurred. Under no circumstances will Plaintiffs' Counsel or any Class Member be liable for any costs or expenses related to notice or administration.

11.06 The finality or effectiveness of the Settlement Agreement shall not depend upon the Court awarding any particular amount of attorneys' fees, costs, expenses, or service awards. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning

the amount(s) of any attorneys' fees, costs and expenses, and/or service awards ordered by the Court to Plaintiffs' Counsel or Plaintiffs shall affect whether the Judgment is final or constitute grounds for cancellation or termination of this Settlement Agreement.

Article XII. ADMINISTRATION OF CLAIMS

12.01 The Settlement Administrator shall administer and calculate the Settlement Claims submitted by Settlement Class Members and give reports as to both claims and distributions to Plaintiffs' Counsel and Earl Enterprises. Plaintiffs' Counsel and Earl Enterprises have the right to review and obtain supporting documentation and challenge those reports if they believe them to be inaccurate or inadequate. All Settlement Claims agreed to be paid in full or in part by Earl Enterprises shall be deemed valid up to the amount paid.

12.02 All Settlement Class Members who fail to timely submit a Settlement Claim for any benefits hereunder within the time frames set forth herein, or such other period as may be ordered by the Court, shall be forever barred from receiving any payments or benefits pursuant to the settlement set forth herein, but will in all other respects be subject to, and bound by, the provisions of the Settlement Agreement, the releases contained herein, and the Judgment.

12.03 No person shall have any claim against the Settlement Administrator, Released Persons, Plaintiffs' Counsel, Earl Enterprises' counsel, and/or Representative Plaintiffs based on distributions of benefits to Settlement Class Members.

Article XIII. CONDITIONS OF SETTLEMENT, CANCELLATION, OR TERMINATION

13.01 The Effective Date of the settlement shall be conditioned on the occurrence of all of the following events:

(i) the Court has entered the Order of Preliminary Approval with notice of a fairness hearing, as required by ¶ 6.01;

(ii) the Court has entered the Judgment granting final approval to the Settlement Agreement (among other things) as set forth herein; and

(iii) Either (i) thirty (30) days have passed after entry of the final Judgment (i.e., the Judgment is entered as a final judgment) and no appeal is taken after the Judgment's entry and no motion or other pleading has been filed with the Court (or with any other court) seeking to set aside, enjoin, or in any way alter the Judgment or to toll the time for appeal of the Judgment; or (ii) all appeals, reconsideration, rehearing, or other forms of review and potential review of the Judgment are exhausted, and the Judgment is upheld without any material modification of the terms of this Agreement.

13.02 If all of the conditions specified in ¶ 13.01 hereof are not satisfied, the Settlement Agreement shall be deemed terminated and/or canceled unless Class Counsel and Earl Enterprises counsel mutually agree in writing to proceed with the Settlement Agreement.

13.03 The Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated and/or cancelled in accordance with its terms (including without limitation in accordance with ¶ 13.02 or ¶ 13.04), then (a) the Parties shall be restored to their respective positions in the Litigation as if the Agreement had never been entered into (and without prejudice to any of the Parties' respective positions on the issue of class certification or any other issue), and (b) the terms and provisions of the Settlement Agreement and statements made in connection with seeking approval of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc.* The Parties' agreement to the

certification of the Settlement Class is also without prejudice to any position asserted by the Parties in the Litigation or in any other proceeding, case or action, as to which all of their rights are specifically preserved. Further, notwithstanding any statement in this Settlement Agreement to the contrary, the reasonable amounts already billed or incurred for costs of notice to the Settlement Class and Claims Administration shall be paid out of the Settlement Fund and Earl Enterprises shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation; and all remaining amounts in the Settlement Fund shall be returned to Earl Enterprises.

13.04 The Settlement Agreement may be terminated and/or cancelled by any of the Parties if (i) the Court rejects, materially modifies, materially amends or changes, or declines to preliminarily approve or finally approve the Settlement Agreement; (ii) an appellate court reverses the final approval order and/or Judgment, and the Settlement Agreement is not reinstated and finally approved without material change by the Court on remand; or (iii) the Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the proposed Preliminary Approval Order, Preliminary Approval Order, the proposed Judgment, the Judgment, or the Settlement Agreement.

13.05 Notwithstanding any provision of this Settlement Agreement to the contrary, including but not limited to ¶ 11.04, and for the avoidance of any doubt, the finality or effectiveness of the Settlement Agreement shall not depend upon the Court awarding any particular amount of attorneys' fees, costs, expenses, or service awards. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning the amount(s) of any attorneys' fees, costs and expenses, and/or service awards ordered by the Court to Plaintiffs' Counsel or Plaintiffs shall

affect whether the Judgment is final or constitute grounds for cancellation and/or termination of this Settlement Agreement.

Article XIV. MISCELLANEOUS PROVISIONS

14.01 The Parties (i) acknowledge that it is their intent to consummate this Settlement Agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

14.02 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any of the Parties as to the merits of any claim or defense. The Parties each agree that the settlement was negotiated in good faith by the Parties, and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

14.03 The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

14.04 The Settlement Agreement, together with the Exhibits attached hereto constitute the entire agreement among the parties hereto, and no representations, warranties or inducements have been made to any party concerning the Settlement Agreement other than the representations, warranties and covenants contained and memorialized in such document. Except as otherwise provided herein, each party shall bear its own costs. This agreement supersedes all previous agreements made by the Parties.

14.05 Plaintiffs' Counsel, on behalf of the Settlement Class, is expressly authorized by Plaintiffs to take all appropriate actions required or permitted to be taken by the Settlement Class pursuant to the Settlement Agreement to effectuate its terms, and also are expressly authorized to enter into any modifications or amendments to the Settlement Agreement on behalf of the Settlement Class which they deem appropriate in order to carry out the spirit of this Settlement Agreement and to ensure fairness to the Settlement Class.

14.06 Each counsel or other person executing the Settlement Agreement on behalf of any party hereto hereby warrants that such person has the full authority to do so.

14.07 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

14.08 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

14.09 Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of its obligations hereunder to carry out the express intent of the Parties hereto.

14.10 The Parties shall not issue any press releases or statements announcing the settlement. In response to any media inquiries regarding the settlement, the Parties may refer to publicly-filed documents in the Litigation. The Parties shall not otherwise make any other public comments or statements to the media concerning the settlement.

14.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all Parties hereto submit to the jurisdiction of the

Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

14.12 The Settlement Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the state of Florida, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Florida without giving effect to choice of law principles.

14.13 As used herein, "he" means "he, she, or it;" "his" means "his, hers, or its," and "him" means "him, her, or it.''

14.14 All dollar amounts are in United States dollars.

14.15 Cashing a settlement check or receipt of an electronic payment is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void 90 days after issuance and shall bear the language: "This check must be cashed within 90 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until 150 days after the Effective Date to request re-issuance. If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and Earl Enterprises shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under paragraph 3.02 or paragraph 3.03 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-issued for any reason more than 180 days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

14.16 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

Class Counsel for Plaintiffs and the Settlement Class

John A. Yanchunis
MORGAN & MORGAN
COMPLEX LITIGATION GROUP

Gayle M. Blatt
CASEY GERRY SCHENK
FANCAVILLA BLATT &
PENFIELD, LLP

Mark S. Reich
LEVI & KORSINKSY, LLP

Carl Malmstrom
WOLF HALDENSTEIN ADLER
FREEMAN & HERZ, LLP

Counsel for Earl Enterprises and Duly Authorized Signatory

Benjamin H. Kleine
COOLEY LLP

Jeffrey Sirolly
General Counsel for Earl Enterprises
Holdings, Inc.