

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiffs Teresa Medina, Morgan Thomson, Kyle Barrett (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendant Spencer Gifts LLC; Spirit Halloween Superstores LLC d/b/a Spirit Halloween, and their related entities (collectively “Defendant” or “Spencer” and, together with Plaintiffs, the “Parties”).

I. RECITALS AND BACKGROUND

WHEREAS, on June 3, 2020, Plaintiff Teresa Medina filed an Arbitration Demand against Spencer alleging that Spencer criminal history screening policies violated Section 1681(b)(2) of the FCRA and Section 1786.16(a)(2) of ICRAA;

WHEREAS, on August 5, 2020, Spencer answered, generally denying each of Medina’s allegations and pleading various affirmative defenses;

WHEREAS, on January 29, 2021, the Arbitrator ruled fully in Ms. Medina’s favor, granting Ms. Medina’s motion for summary judgment, and denying Spencer’s motion for partial summary judgment;

WHEREAS, on March 9, 2021, the Parties entered into a tolling agreement, agreeing to toll the statutes of limitations for the Affected Parties’ FCRA and ICRAA claims from January 29, 2021 and agreeing to mediate Plaintiffs’ claims;

WHEREAS, on July 19, 2021, and August 27, 2021 the Parties participated in two mediation sessions with Dina R. Jansenson, Esq., a JAMS mediator with experience in the mediation of complex employment class actions, and the Parties continued discussing the possibility of settlement with the mediator’s assistance for a period of time after the mediation sessions;

WHEREAS, on February 17, 2022, the Parties fully executed a settlement term sheet;

WHEREAS, Defendant denies any and all liability or damages with respect to the alleged facts and causes of action asserted by Plaintiffs;

WHEREAS, without admitting or conceding any liability or damages whatsoever, Defendant has agreed to settlement of Plaintiffs’ claims on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty in litigating these claims;

WHEREAS, Plaintiffs’ Counsel has analyzed and evaluated the merits of the claims made against Spencer, and the impact of this Agreement on Plaintiffs and members of the proposed Class, and based upon Plaintiffs’ Counsel’s analysis and evaluation of a number of factors, and recognizing the substantial risks of future litigation and/or arbitrations, including the possibility that if not settled now, future litigation and/or arbitrations might not result in any recovery, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiffs’ Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of Plaintiffs and the members of the Class;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties hereto agree to a full and complete settlement of Plaintiffs' claims on the following terms and conditions:

1. DEFINITIONS

The defined terms set forth in this Agreement have the meanings ascribed to them below.

- 1.1 Arbitrator.** "Arbitrator" means David B. Van Etten.
- 1.2 Agreement.** "Agreement" or "Settlement" means this Settlement Agreement and Release.
- 1.3 Arbitration Award to Named Plaintiff Teresa Medina.** "Arbitration Award to Named Plaintiff Teresa Medina" means compensation awarded to Plaintiff Teresa Medina in recognition of her Arbitration Award.
- 1.4 Award to Plaintiff Kyle Barrett.** "Award to Plaintiff Kyle Barrett" means compensation awarded to Plaintiff Kyle Barrett for his role in the case.
- 1.5 Bar Date.** "Bar Date" means the date set by the Arbitrator by which any Class Member who wishes to qualify as a Participating Class Member must timely submit a Claim Form pursuant to Section 4.1(C).
- 1.6 California ICRAA Class Members.** "California ICRAA Class Members" means all individuals who applied to Spencer for employment in California between January 29, 2019, to August 15, 2020;
- 1.7 California ICRAA Class Release.** "California ICRAA Class Release" means the release of all claims under the Investigative Consumer Reporting Agency Act, California Civil Code that accrued against Spencer during the period of January 29, 2019, to August 15, 2020, as described in Section 5.1.
- 1.8 Claims Period.** "Claims Period" means the period of 60 days after the date of mailing of the Notice and Claim Forms.
- 1.9 Class Counsel or Plaintiffs' Counsel.** "Class Counsel" or "Plaintiffs' Counsel" means Outten & Golden LLP.
- 1.10 Class Members or the Class.** "Class Members" or the "Class" means California ICRAA Class Members and National FCRA Class Members.
- 1.11 Cy Pres.** "Cy Pres" means Bet Tzedek.
- 1.12 Days.** "Days" means calendar days, unless otherwise noted.

- 1.13 Defendant or Spencer.** Defendant or Spencer. “Defendant” or “Spencer” means Spencer Gifts LLC, Spencer Gifts LLC; and Spirit Halloween Superstores LLC d/b/a Spirit Halloween, and their related entities.
- 1.14 Defendant’s Counsel.** “Defendant’s Counsel” means Jackson Lewis P.C.
- 1.15 Effective Date.** “Effective Date” of the Settlement means the latest of the following dates: (a) the expiration of time for appeal of the Final Approval Order; or (b) if there is an appeal of the Final Approval Order, the date after all appeals are finally resolved in favor of final approval.
- 1.16 Fairness Hearing.** “Fairness Hearing” means the hearing before the Arbitrator relating to the Motion for Final Approval.
- 1.17 Final Approval Order.** “Final Approval Order” means the Order entered by the Arbitrator after the Fairness Hearing, approving the terms and conditions of this Agreement.
- 1.18 Gross Settlement Fund.** “Gross Settlement Fund” means One Million Eight Hundred and Five Thousand Dollars and Zero Cents (\$1,805,000.00) paid by Defendant to Plaintiffs and Class Members to resolve their claims, inclusive of attorneys’ fees and expenses, Service Awards to Named Plaintiffs, and the Settlement Administrator’s fees and expenses.
- 1.19 Individual Settlement Amount.** “Individual Settlement Amount” means the payment(s) to be distributed to each Participating Class Member in accordance with the allocation formula set forth in Section 3.4 herein, and to be distributed by the Settlement Administrator from the Net Settlement Fund.
- 1.20 Named Plaintiffs.** “Named Plaintiffs” means Teresa Medina and Morgan Thomson.
- 1.21 National FCRA Class Members.** “National FCRA Class Members” means all individuals who applied for employment to Spencer nationwide between January 29, 2019, to August 15, 2020;
- 1.22 National FCRA Class Release.** “National FCRA Class Release” means the release of all claims under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*, that accrued against Spencer during the period of January 29, 2019, to August 15, 2020, as described in Section 5.2.
- 1.23 Net Settlement Fund.** “Net Settlement Fund” means the Gross Settlement Fund minus Arbitrator-approved attorneys’ fees and expenses, Arbitrator-approved Service Awards to the Named Plaintiffs, and the Settlement Administrators fees and expenses.
- 1.24 Notice and Claim Form.** “Notice and Claim Form” means the Arbitrator-approved Notice of Proposed Settlement of Class Action Lawsuit and Claim Form. There shall be one form of Notice and Claim Form for California ICRAA Class Members and one form of Notice and Claim Form for National FCRA Class Members who are not also California ICRAA Class Members. *See Exhibit A* (Class Member Notice and Claim

Form).

- 1.25 Objection and Opt-Out Period.** “Objection and Opt-Out Period” means period of 45 days after the date of mailing of the Notice and Claim Forms during which Class Members may object to or opt-out of this settlement.
- 1.26 Objector.** “Objector” means an individual who properly files an objection to this Agreement, but does not include any individual who opts out of this Agreement.
- 1.27 Opt-out Statement.** “Opt-out Statement” is a written, signed statement that an individual Class Member has decided to opt out and not be included in this Agreement.
- 1.28 Participating Class Members.** “Participating Class Members” means a Class Member or the authorized legal representative of such Class Member who timely submits a Claim Form.
- 1.29 Parties.** “Parties” are the Named Plaintiffs and Defendant.
- 1.30 Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Arbitrator (i) conditionally certifying the Class under Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) solely for the purpose of effectuating this Agreement; (ii) preliminarily approving the terms and conditions of this Agreement; (iii) appointing Class Counsel as defined above; (iv) directing the manner and timing of providing Notices and Claim Forms to the Class Members; and (v) setting dates to effectuate the terms of this Agreement, including the Bar Date and the date of the Fairness Hearing.
- 1.31 Reminder.** “Reminder” means the text set forth in **Exhibit B** attached hereto, which the Settlement Administrator shall send via e-mail, First Class United States Mail, and text message to Class Members who have not returned a Claim Form or opted out halfway through the initial dissemination of Notice and Claim Form.
- 1.32 Service Award.** “Service Award” means Arbitrator-approved compensation awarded to Named Plaintiffs for their role in the case.
- 1.33 Settlement Administrator.** “Settlement Administrator” means the company selected by Plaintiffs’ Counsel, with approval by Spencer, and unaffiliated with either party or any involved law firms, retained by the Parties to administer Notice and distribution of settlement monies.
- 1.34 Total Fund.** “Total Fund” means One Million Eight Hundred and Fifty Thousand Dollars and Zero Cents (\$1,850,000.00) that Defendant will transfer to the Settlement Administrator, inclusive of the Gross Settlement Fund, Arbitration Award to Named Plaintiff Teresa Medina, and Award to Plaintiff Kyle Barrett.

2. INITIAL PROCEDURAL ISSUES

2.1 **Binding Agreement.** This Agreement is a binding agreement and contains all material agreed-upon terms for the Parties to seek a full and final settlement of the Litigation.

2.2 **Retention and Responsibilities of the Settlement Administrator.** The Settlement Administrator will be selected by Plaintiffs' Counsel, with approval by Spencer, and unaffiliated with either party or any involved law firms. The Settlement Administrator's fees and expenses will come out of the Gross Settlement Fund.

(A) The Settlement Administrator shall be responsible for: preparing, printing, and disseminating to Class Members the Notices and Claim Forms and Reminders, as provided herein; performing skip traces and resending, within one day of receipt, any Notice and Claim Form returned without a forwarding address or resending to those with a new forwarding address; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a website where Class Members can review additional information regarding the settlement and submit a Claim Form; preparing, monitoring, and maintaining a telephone number with phone answerers; promptly furnishing to counsel for the Parties copies of any Objections and requests for exclusion that the Settlement Administrator receives; receiving, retaining, and reviewing the Claim Forms submitted by Class Members; providing counsel for the Parties with copies of all Claim Forms submitted by Class Members; keeping track of requests for exclusion, Objections, or otherwise, including maintaining the original mailing envelope in which the request was mailed; distributing the settlement checks to Participating Class Members; preparing, sending, and/or wire transferring Class Counsel's approved attorneys' fees and costs; mailing Service Awards in accordance with this Agreement and the Final Approval Order; referring to Class Counsel all inquiries by Class Members regarding matters not within the Settlement Administrator's duties specified herein; responding to inquiries of Class Counsel and Defendant's Counsel consistent with the Settlement Administrator's duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices and Claim Forms and receipt of Claim Forms, returned mail and other communications and attempted written or electronic communications with Class Members, confirming in writing to Class Counsel and Defendant's Counsel its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the Individual Settlement Amounts; reporting on the status of the settlement to the Parties on a weekly basis (including, but not limited to, the number of Notices mailed, returned as undeliverable, and re-mailed; the number of Claim Forms received; the number of requests for exclusion received; and any other pertinent information); notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval; locating Class Members, including calling Class Members, if necessary; establishing and administering the QSF; calculating and paying, as provided herein, all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; and such other tasks as set forth herein, or as the Parties mutually agree.

(B) Defendant agrees to cooperate with the Settlement Administrator to facilitate Defendant's obligations in this Agreement, including to provide information to assist the

Settlement Administrator in locating Class Members, as specified in Section 4.1 below.

(C) The Settlement Administrator shall assume responsibility for any errors or omissions caused solely by the Settlement Administrator regarding the calculation of Participating Class Member's individual settlement payments.

2.3 Preliminary Approval Motion.

(A) Within twenty (20) days following the Parties' execution of this Agreement, Class Counsel will file with the Arbitrator a Motion for Preliminary Settlement Approval ("Preliminary Approval Motion") which shall include (1) the proposed Notices and Claim Forms, attached hereto as **Exhibit A**; (2) a proposed Preliminary Approval Order; (3) an executed version of this Agreement; and (4) necessary documents, memoranda, affidavits, and exhibits for purposes of certification of a Class under Federal Rule of Procedure 23 (b)(3) for settlement purposes only, and preliminarily approving the Settlement.

(B) The Preliminary Approval Motion also will seek the setting of the Bar Date for Class Members to submit a Claim Form, which date will be sixty (60) days from the mailing of Notice and Claim Forms to Class Members, or, for Class Members for whom the Notice and Claim Form was re-mailed, the later of the time remaining in the Claims Period or thirty (30) days from re-mailing in which to return the Claim Form. The Preliminary Approval Motion will also seek the setting of a date for Class Members to opt out, or provide objections to this Agreement, which date will be forty-five (45) days from the mailing of the Notice and Claim Forms to Class Members, or, for Class Members for whom a Notice and Claim Form was re-mailed, at least thirty (30) days from re-mailing, and for a Fairness Hearing for Final Approval of the Settlement before the Arbitrator at the earliest practicable date.

(C) In the Preliminary Approval Motion, Class Counsel will seek to certify a Rule 23(b)(3) class, and inform the Arbitrator of the intended process to obtain a Final Approval Order that will, among other things, seek to: (1) approve the Settlement as fair, adequate, and reasonable; (2) incorporate the terms of the National FCRA Class Release and California ICRAA Class Release, as set forth herein; (3) dismiss the Litigation with prejudice; (4) award Class Counsel attorneys' fees and costs; and (5) award Service Awards to the Named Plaintiffs.

(D) If the Arbitrator denies the Preliminary Approval Motion, the Parties will work together in good faith to revise the Agreement to address the Arbitrator's concerns, seek reconsideration, and/or appeal the Arbitrator's decision. If these efforts are ultimately unsuccessful or a Class is not certified, the Litigation will resume as if no settlement had been attempted, and this Settlement will be null and void, with no force and effect.

(E) The Parties will work together, diligently and in good faith, to expeditiously obtain a Preliminary Approval Order, Final Approval Order, and all other aspects of the settlement approval process.

3. SETTLEMENT TERMS

3.1 Settlement Amount.

(A) This is a claims-made settlement, in which Defendant agrees to pay the Participating Class Members settlement monies in accordance with the allocation formula set forth in Section 3.4 herein.

(B) Defendant agrees to transfer the Total Fund of One Million Eight Hundred and Fifty Thousand Dollars and Zero Cents (\$1,850,000.00) to the Settlement Administrator within ten (10) days of the Effective Date.

(C) Class Counsel will seek an award of up to one-third of the Gross Settlement Fund (\$601,666.67), plus reasonable out-of-pocket litigation costs and expenses, for the payment of attorneys' fees and costs. Class Counsel's application for reasonable fees and litigation costs and expenses shall cover fees, costs and expenses incurred in Plaintiff Teresa Medina's arbitration. Attorneys' fees and costs will be allocated from the Gross Settlement Fund, and shall be wired to Outten & Golden LLP (or as agreed to by Plaintiffs' Counsel) no later than four (4) days after Defendant's transfer of the Settlement Fund to the Settlement Administrator (i.e. no later than fourteen (14) days after the Effective Date).

(D) Reminder postcards will be sent within sixty (60) days after the initial distribution of checks to Participating Class Members who have not yet cashed their Settlement Checks reminding them to cash their checks prior to the ninety (90) day deadline. Any uncashed checks as of ninety (90) days after the issuance of Settlement Checks in accordance with this Agreement will be distributed in accordance with Section 3.5 herein.

3.2 Class Definition: The Class is comprised of California ICRAA Class Members and National FCRA Class Members as defined in Sections 1.6 and 1.21 herein.

3.3 Number of Class Members. The number of Class Members is 15,028. If more than 15,028 Class Members participate in this Settlement, Defendant will pay a proportionate additional amount into the Fund for each additional Class Member to claim from, on the same basis as existing Class Members.

3.4 Net Settlement Amount and Allocation to Participating Class Members.

(A) The allocation to Participating Class Members for Settlement Checks will be made from the Net Settlement Amount.

(B) Participating California ICRAA Class Members will each receive three points and Participating National FCRA Class Members who are not also Participating California ICRAA Class Members will each receive one point.

(C) To calculate each Participating Class Member's proportionate share:

(i) Add all points for Participating Class Members together to obtain the "Total Denominator;"

- (ii) Divide the number of points for each Participating Class Member by the Total Denominator to obtain each Participating Class Member's "Portion of the Net Settlement Amount."
- (iii) Multiply each Participating Class Member's Portion of the Net Settlement Amount by the Net Settlement Amount to determine each Participating Class Member's "Settlement Award."

3.5 Distribution of Unclaimed Funds.

(A) Unclaimed Funds. Should any funds remain in the Net Fund after the ninety (90) day check cashing deadline, then the remaining funds shall be distributed as follows:

- (i) **Allocated to Class Members Who Submitted Untimely Claim Forms.** Any funds remaining in the Net Fund will first be distributed to Class Members who submitted untimely Claim Forms (if agreed to be accepted by the parties).
- (ii) **Redistribution.** After allocation to Class Members who submitted untimely Claim Forms (should the Parties agree to accept their late Claim Forms), if applicable, as set forth above, any additional remaining funds will be redistributed to Participating Class Members (pro rata, using the same allocation formula as with the initial distribution).
- (iii) **Cy Pres.** Any remaining funds will be given to the Cy Pres recipient.

3.6 Tax Treatment of Individual Settlement Payments.

(A) ICRAA Payments. ICRAA payments will be treated as non-wages, for which the Settlement Administrator shall issue an IRS Form 1099-MISC to Participating California ICRAA Class Members.

(B) FCRA Payments. FCRA payments will be treated as non-wages, for which the Settlement Administrator shall issue an IRS Form 1099-MISC to Participating National FCRA Class Members.

3.7 Attorneys' Fees and Costs.

(A) At the Fairness Hearing and in the Motion for Final Approval, Class Counsel will request that the Arbitrator approve an award of up to one third of the Gross Settlement Fund for attorneys' fees, plus reasonable out-of-pocket litigation costs and expenses. Spencer agrees not to oppose Plaintiffs' request for attorneys' fees and costs in accordance with this Agreement.

(B) Attorneys' fees and costs shall be wired to Outten & Golden LLP (or as agreed to by Plaintiffs' Counsel) no later than four (4) days after Defendant's transfer of the Total Fund to the Settlement Administrator.

(C) Payments of attorneys' fees and costs pursuant to this Section shall be made without withholding and reported to the IRS and the payee under the payee's name and

taxpayer identification number, which such payee shall provide for this purpose, on an IRS Form 1099.

3.8 Service Awards to Named Plaintiffs.

(A) In return for services rendered to the Class and in consideration for execution of the General Release set forth in Section 5.3 herein, at the Fairness Hearing, Class Counsel will seek Arbitrator approval of Service Awards of Ten Thousand Dollars and Zero Cents (\$10,000.00) each for Named Plaintiffs Teresa Medina and Morgan Thomson.

(B) The Settlement Administrator will send the Service Awards to the Named Plaintiffs no later than four (4) days after Defendant's transfer of the Total Fund to the Settlement Administrator.

(C) Defendant agrees not to oppose Plaintiffs' request for Service Awards in accordance with this Agreement.

(D) The Settlement Administrator shall determine the tax treatment of the Service Awards to Named Plaintiffs.

3.9 Arbitration Award to Named Plaintiff Teresa Medina.

(A) In recognition of Named Plaintiff Teresa Medina's Arbitration Award, Class Counsel will seek Arbitrator approval of an Arbitration Award of Thirty-five Thousand Dollars and Zero Centers (\$35,000.00) for Ms. Medina, which in addition to the service award shall be Ms. Medina's sole recovery from the Arbitration.

(B) The Settlement Administrator will send the Arbitration Award to Named Plaintiff Teresa Medina no later than four (4) days after Defendant's transfer of the Total Fund to the Settlement Administrator.

(C) Defendant agrees not to oppose Plaintiffs' request for the Arbitration Award to Named Plaintiff Teresa Medina in accordance with this Agreement.

(D) The Arbitration Award to Named Plaintiff Teresa Medina shall be treated as non-wages, for which the Settlement Administrator shall issue an IRS Form 1099.

3.10 Award to Plaintiff Kyle Barrett.

(A) In return for services rendered to the Class and in consideration for execution of the General Release set forth in Section 5.3 herein, at the Fairness Hearing, Class Counsel will seek Arbitrator approval of an Award of Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff Kyle Barrett.

(B) The Award to Plaintiff Kyle Barrett shall be sent to Plaintiff Kyle Barrett no later than four (4) days after Defendant's transfer of the Total Fund to the Settlement Administrator.

(C) Defendant agrees not to oppose Plaintiffs' request for the Award to Plaintiff Kyle Barrett in accordance with this Agreement.

(D) The Award to Plaintiff Kyle Barrett shall be treated as non-wages, for which the Settlement Administrator shall issue an IRS Form 1099.

4. Class Procedural Issues.

4.1 Notice to Class Members.

(A) **Class List.** Within ten (10) days after the date of the Preliminary Approval Order, Defendant will provide the Settlement Administrator a class list containing the following information for each Class Member: names, last four digits of social security number, last known address, telephone number(s) (if known), and e-mail address(es) (if known), date of application to Spencer, and whether such individual is a California ICRAA Class Member and/or National FCRA Class Member (the "Class List"). The Settlement Administrator will maintain the Class List and any information contained therein and derived therefrom in a confidential manner, and shall not provide such list to any other entity or person, except Class Counsel, without the prior consent of Defendant. After receipt of the Class Members' information from Defendant, the Settlement Administrator will perform a search and update using the National Change of Address Database to correct any known or identifiable address changes for Class Members.

(B) **Notice Procedure.** Within fourteen (14) days after receipt of the Class List, the Settlement Administrator shall cause a copy of the Notice and Claim Form, containing information instructing Class Members of their right to submit a Claim Form, object, or opt-out of the agreement, to be distributed, as approved by the Arbitrator, by e-mail (where available), First Class United States Mail, and text message (where available) to Class Members. The Notice and Claim Form will include a scannable QR Code that links to the settlement website. The Parties agree that the Notice and Claim Form, sent by email, First Class United States Mail, and text message, constitutes the best notice practicable under the circumstances, and constitutes due and sufficient notice of the pendency of the proposed Settlement and a final approval hearing to all persons entitled to notice in full compliance with due process under the United States Constitution and state law.

(C) **Bar Date.** Any Class Member sent a Notice and Claim Form that is not returned as undeliverable shall have sixty (60) days from the date of mailing by the Settlement Administrator to submit a Claim Form. Class Members to whom the Notice and Claim Form was re-mailed shall have the later of the time remaining in the Claims Period or thirty (30) days from re-mailing in which to return the Claim Form. Any Class Member sent a Notice and Claim Form that is not returned as undeliverable shall have forty-five (45) days from the date of mailing by the Settlement Administrator to object or opt out of the Agreement pursuant to Sections 4.2 and 4.3 herein, and as instructed in the Notice. Class Members to whom the Notice and Claim Form was re-mailed shall have the later of the time remaining in the Objection and Opt-Out Period or thirty (30) days from the re-mailing to object or opt out of the Agreement.

(D) The Settlement Administrator will take all reasonable steps to obtain the correct address of any Class Members for whom a Notice and Claim Form is returned by the post office as undeliverable and shall attempt reasonable re-mailings of the Notice and Claim Form to the updated address. The Settlement Administrator will notify Class Counsel and Defendant's Counsel if any Notice and Claim Form sent to a Class Member is returned as undeliverable after the first mailing, as well as if any such Notice and Claim Form is returned as undeliverable after any subsequent mailing(s) as set forth in this Agreement. To the extent requested by the Settlement Administrator as part of the notice process, Spencer will make a reasonable search of its records to provide the full social security number for any individual Class Member whom the Settlement Administrator identifies.

(E) Reminders. Halfway through the Claims Period, the Settlement Administrator shall send the Reminder attached hereto as **Exhibit B** via e-mail, First Class United States Mail postcard, and text message to each Class Members who has not returned a Claim Form or opted out. The Reminder will include a scannable QR code that links to the settlement website.

(F) The Settlement Administrator shall cause settlement checks to be mailed to Participating Class Members within thirty (30) days after the Effective Date.

(G) Each Participating Class Member shall have ninety (90) days from the date of mailing by the Settlement Administrator to deposit or cash his or her settlement check.

(H) The Settlement Administrator will send out a reminder postcard, by e-mail (where available), First Class United States Mail, and text message (where available) within sixty (60) days after the initial distribution of checks to Participating Class Members who have not yet cashed their Settlement Checks reminding them to cash their checks prior to the ninety (90) day deadline.

(I) Within seven (7) days of the expiration of the ninety (90) day deadline, any remaining uncashed amounts shall be distributed in accordance with Section 3.5 herein.

4.2 Class Member Opt-Out Statements.

(A) Any Class Member who chooses to opt out of the Settlement as set forth in this Agreement must mail via First Class United States Mail, postage prepaid, a written, signed statement to the Settlement Administrator that states their name, address, email address, and telephone number, and that states, "I opt out of the Spencer Settlement." ("Opt-out Statement")

(B) The Settlement Administrator will promptly furnish the Parties with copies of all Opt-out Statements received by the Settlement Administrator. At the request of the Parties, and in preparation of the declaration that the Settlement Administrator will prepare as part of the Final Approval Motion, the Settlement Administrator will send the Parties a list of the names of all individuals who submitted Opt-out Statements. The final list will be submitted by Plaintiffs, with redaction of any personal identifying information, along with the declaration of the Settlement Administrator, as an exhibit to

the Final Approval Motion. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and the originals of all envelopes accompanying Opt-out Statements in its files until such time as the Settlement Administrator is relieved of its duties and responsibilities under this Agreement.

(D) Any Class Member who does not properly submit an Opt-out Statement pursuant to this Agreement and who does not submit a Claim Form will be deemed to have accepted the Settlement and shall be bound by the applicable FCRA and/or ICRAA Release set forth in Sections 5.1 and 5.2 herein, but will not receive a settlement check.

4.3 Objections to Settlement.

(A) Class Members who wish to present objections to the proposed Settlement at the Fairness Hearing must first do so in writing. To be considered, such statement must be mailed to the Settlement Administrator via United States Mail, postage pre-paid, and be received by the Settlement Administrator within the applicable deadline set forth herein. The statement must include all reasons for the objection; and any reasons not included in the statement will not be considered. The statement must also include the name, address, email address, and telephone number for the Class Member making the objection. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Defendant's Counsel as soon as they are received. The final list will be submitted by Plaintiffs, with redaction on any personal identifying information, along with the declaration of the Settlement Administrator attached to the Final Approval Motion.

(B) Any individual who files objections to the Settlement ("Objector") also has the right to appear at the Fairness Hearing, either in person or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing in his or her written objections at the time he or she submits such written objections. An Objector may withdraw his or her objections at any time. No Class Member may present an objection at the Fairness Hearing based on a reason not stated in his or her objections. A Class Member who has submitted an Opt-out Statement may not submit objections to the Settlement.

(C) The Parties may file with the Arbitrator written responses to any filed objections no later than three (3) business days before the Fairness Hearing, if not otherwise addressed in their Motion for Final Approval.

4.4 Fairness Hearing and Motion for Final Approval and Dismissal.

(A) At the time established by the Arbitrator via the Preliminary Approval Order, Plaintiffs' Counsel will file with the Arbitrator a Motion for Final Approval of Settlement, and a Proposed Order Approving the Settlement and Dismissing the Litigation with prejudice ("Final Approval Motion") that is consistent with this Agreement. Thereafter, and no later than 120 days after service of the Arbitrator's Final Award, the Parties shall file a Joint Petition in the Los Angeles Superior Court pursuant to Code of Procedure section 1292.2 to confirm the Arbitrator's Final Award and have judgment entered thereon. (*ADR-106 PETITION TO CONFIRM, CORRECT, OR VACATE*)

CONTRACTUAL ARBITRATION AWARD (Alternative Dispute Resolution). Parties agree to cooperate in preparing the Joint Petition, memorandum of points and authorities, and declaration of counsel as required by Code of Civil Procedure section 1294.4(b). Neither Party will oppose confirmation of the Final Award and entry of judgment or seek an award of fees or costs connection therewith.

(B) At the Fairness Hearing and in the Motion for Final Approval of Settlement, Class Counsel will request that the Arbitrator, among other things: (1) certify the Class for purposes of the Settlement; (2) find that the dissemination of the Settlement notice was accomplished as directed and met the requirements of due process; (3) approve the Settlement and Agreement as fair, reasonable, adequate, and binding on all Class Members who have not timely opted out of the Settlement; (4) award attorneys' fees and costs to Class Counsel; (5) award the Service Awards to Named Plaintiffs; (6) approve the Arbitration Award to Named Plaintiff Teresa Medina; (7) approve the Award to Plaintiff Kyle Barrett; (8) order entry of Final Judgment and dismissal with prejudice in accordance with this Agreement; and (9) retain jurisdiction as necessary for the purpose of facilitating the Settlement and other relief pursuant to this Agreement.

(C) If the Arbitrator does not enter a Final Approval Order in accordance with this Agreement, or if the Final Approval Order is set aside on appeal, the Parties will work together in good faith to revise the Agreement to address the Arbitrator's concerns, seek reconsideration, and/or attempt other remedial actions to correct any deficiencies in the Agreement. If these attempts are unsuccessful, or the Class is not certified, the Medina arbitration will proceed as if no settlement had been attempted, and this Settlement will be null and void, with no force and effect.

5. Release

5.1 California ICRAA Release. By operation of the entry of Final Approval, and except as to such rights or claims as may be created by the Settlement Agreement, each California ICRAA Class Member who does not opt out of the Agreement shall release Spencer including its affiliates, subsidiaries, divisions, predecessors, insurers, successors and assigns; Talent Reef, Inc., and their current and former employees, attorneys, officers, directors, insurers and agents, both individually and in their business capacities, and their employee benefit plans and programs and the trustees, administrators, fiduciaries and insurers of such plans and programs, each in their capacity as such, (collectively, the "**Released Parties**") from all claims under the California Investigative Consumer Reporting Agencies Act ("ICRAA") that accrued during the period of January 29, 2019, to August 15, 2020.

5.2 National FCRA Release. By operation of the entry of Final Approval, and except as to such rights or claims as may be created by the Settlement Agreement, each National FCRA Class Member who does not opt out of the Agreement shall release **Released Parties** from all claims against Spencer that accrued during the period January 29, 2019, to August 15, 2020, under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*

5.3 Named Plaintiff's and Plaintiff's General Releases. In addition to the waiver and release contained in Sections 5.1 and 5.2 above, and in consideration for the Service Award, the Arbitration Award to Named Plaintiff Teresa Medina, and the Award to Plaintiff Kyle Barrett, if approved and paid under Sections 3.7, 3.8, and 3.9 above, Named Plaintiff and Plaintiff Kyle Barrett and each of their respective heirs, executors, representatives, attorneys, administrators, agents, insurers, and assigns (collectively the "**Releasers**") knowingly, irrevocably and unconditionally fully and forever waive, release, and discharge **Released Parties** to the full extent permitted by law, of and from any and all claims, known and unknown, asserted and unasserted, which Named Plaintiff or Plaintiff has or may have against the Released Parties as of the date of execution of this Settlement Agreement including, but not limited to, any alleged violation of Title VII of the Civil Rights Act; the Civil Rights Act of 1991; Sections 1981 through 1988 of Title 42 of the United States Code; the Employee Retirement Income Security Act; the Immigration Reform and Control Act; the Americans with Disabilities Act; the Age Discrimination in Employment Act; the Workers Adjustment and Retraining Notification Act; the Occupational Safety and Health Act; the Sarbanes-Oxley Act; the Fair Credit Reporting Act; the California Investigative Consumer Reporting Agency Act; the Family and Medical Leave Act; the California Equal Pay Act; the Genetic Information Nondiscrimination Act; California Family Rights Act; the California Fair Chance Law; the California Fair Employment and Housing Act; the California Unruh Civil Rights Act; statutory provisions regarding the confidentiality of AIDS Information; the California Confidentiality of Medical Information Act; the California Parental Leave Law; the California Apprenticeship Program Bias Law; the California Equal Pay Law; the California Whistleblower Protection Law; the California Military Personnel Bias Law; statutory provision regarding California Family and Medical Leave; statutory provisions regarding California electronic monitoring of employees; the California Occupational Safety and Health Act and any applicable regulations thereunder; California Political Activities of Employees Law; California Domestic Violence Victim Employment Leave Law; and the California Court Leave Law.

In additional Named Plaintiff and Plaintiff release any and all claims under those other provisions of the California Labor Code that lawfully may be released; any other federal, state or local civil or human rights law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort or common law; and, except as expressly provided above in section 3.1(c) of this Agreement, any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters.

However, this general release and waiver of claims excludes, and neither the Named Plaintiff nor Plaintiff waives, releases, or discharges: (i) any right to file an administrative charge or complaint with or testify, assist, or participate in an investigation, hearing or proceeding conducted by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other similar federal or state administrative agencies, although Named Plaintiff and Plaintiff waives any right to monetary relief related to any filed charge or administrative complaint; (ii) claims which cannot be waived by law, such claims for unemployment benefit rights and workers' compensation; and (iii) any claims to accrued, vested benefits

under any employee benefit, savings, insurance, or pension plan.

- 5.4. Named Plaintiff's and Plaintiff's Waiver of California Civil Code § 1542.** To effect a full and complete general release as described above, Named Plaintiff and Plaintiff expressly waive and relinquish all rights and benefits of section 1542 of the Civil Code of the State of California, and do so understanding and acknowledging the significance and consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of California states as follows:

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.

Thus, notwithstanding the provisions of section 1542, and to implement a full and complete release and discharge of the Released Parties, Named Plaintiff and Plaintiff expressly acknowledge this Settlement Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such claims. Named Plaintiff and Plaintiff warrant that they have read this Settlement Agreement, including this waiver of California Civil Code section 1542, and that they have consulted with or had the opportunity to consult with counsel of their choosing about this Settlement Agreement and specifically about the waiver of section 1542, and that Named Plaintiff and Plaintiff each understand this Settlement Agreement and the section 1542 waiver, and that they now freely and knowingly enter into this Settlement Agreement. Named Plaintiff and Plaintiff further acknowledge that they later may discover facts different from or in addition to those Named Plaintiff and/or Plaintiff now knows or believes to be true regarding the matters released or described in this Settlement Agreement, and even so Named Plaintiff and Plaintiff agree that the releases and agreements contained in this Settlement Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts.

- 5.5 Medicare Secondary Payer Rules.** As a term of this Settlement Agreement as to Named Plaintiff and Plaintiff only, the Parties have fully considered Medicare's interests pursuant to the Medicare Secondary Payer rules and any secondary payer interests of Medicaid. In doing so, Named Plaintiff and Plaintiff affirm that as of the date they execute this Settlement Agreement, neither Named Plaintiff nor Plaintiff is Medicare eligible (*i.e.*, is not 65 years of age or older; is not suffering from end-stage renal failure; has not received Social Security Disability Insurance benefits for 24 months or longer, *etc.*) or Medicaid eligible. Nonetheless, if the Centers for Medicare & Medicaid Services (the "CMS") (this term includes any related agency or CMS contractor representing Original Medicare's interests under Medicare Parts A and B), a Medicare Advantage Plan under Medicare Part C, or a Medicare Prescription Drug Plan under Medicare Part

D determines that Medicare has an interest in the payment to Named Plaintiff and/or Plaintiff under this Settlement Agreement, or if a Medicaid medical assistance plan established under Title 19 of the Social Security Act, or a Medicaid entity administering and/or underwriting such plan, determines that Medicaid has an interest in the payment to Named Plaintiff and/or Plaintiff under this Settlement Agreement, Named Plaintiff and Plaintiff agree to (i) indemnify, defend, and hold the Released Parties harmless from any action by the Medicare or Medicaid entities identified above relating to medical expenses of Named Plaintiff and/or Plaintiff, (ii) reasonably cooperate with the Released Parties upon request with respect to any information needed to satisfy any reporting requirements under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 and/or under Medicaid law, if applicable, and any claim that any Medicare or Medicaid entity identified above may make and for which Named Plaintiff and/or Plaintiff is required to indemnify the Released Parties under this paragraph, and (iii) waive any and all future actions against the Released Parties for any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A) or applicable state law.

- 6. Defendant's Termination Option.** If the number of Class Members who validly opt-out pursuant to Section 4.2 exceeds 5% of the total Class size, Defendants shall have the right and option (but not the obligation) to terminate this Settlement by communicating such decision to both the Settlement Administrator and Class Counsel in writing within 10 business days after receiving notice from the Settlement Administrator of the total number of Class Members who have validly opted out of the Settlement. Should this right to terminate the Settlement under this provision be exercised, Spencer shall be responsible for paying or reimbursing for all costs incurred by the Settlement Administrator up to the date that the Settlement is terminated. The Parties hereto and their counsel agree that they shall not seek, solicit, or otherwise encourage Class Members to submit exclusion/opt-out requests or objections to the Settlement.

7. Interpretation, Publicity, and Enforcement.

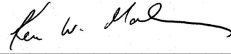
- 7.1 Cooperation Between the Parties; Further Acts.** Plaintiffs shall use reasonable best efforts to obtain the Arbitrator's approval of this Agreement and all of its terms. The Parties shall reasonably cooperate with each other, and each Party, upon request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- 7.2 Public Statements.** The Parties will meet and confer to agree on the parameters of any public statements about the Settlement, to the extent the Parties so desire to make one. Such statements will *only* be issued in accordance with the Parties' agreed terms, if the Parties jointly agree to make one.
- 7.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the subject matter contained herein, and all prior and contemporaneous negotiations and understandings between the Parties shall be deemed merged into the Agreement.

- 7.4 **Binding Effect.** This Agreement shall be binding upon the Parties.
- 7.5 **Arms' Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arms' length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless otherwise stated.
- 7.7 **Captions.** The captions or headings of the Sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- 7.7 **Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party jointly participated in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.
- 7.8 **Governing Law.** This Agreement shall in all respects be interpreted, enforced and government by and under the laws of the State of California.
- 7.9 **Continuing Jurisdiction.** The Arbitrator shall retain jurisdiction over the interpretation and implementation of this Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Agreement and of the Settlement contemplated hereby.
- 7.10 **Waivers, Modifications, or Amendments in Writing.** No waiver, modification, or amendment of the terms of this Agreement, whether purportedly made before or after the Arbitrator's approval of this Agreement, shall be valid and binding unless in writing, signed by or on behalf of Plaintiffs and Defendant, subject to any required Arbitrator approval. Any failure by a Party to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all provisions of this Agreement.
- 7.11 **When Agreement Becomes Binding; Counterparts.** This Agreement shall become valid and binding upon its complete execution, except that it shall be without force or effect if not approved by the Arbitrator other than as to any act or obligation that is required or contemplated to occur prior to the Arbitrator's decision whether to preliminarily or finally approve the Settlement. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- 7.12 **Facsimile and Email Signatures.** Any signature made and transmitted by facsimile or email for the purpose of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page by facsimile or email.

WE AGREE TO THESE TERMS,

Dated: August 29, 2022

SPENCER GIFTS LLC, and
SPIRIT HALLOWEEN SUPERSTORES LLC d/b/a
SPIRIT HALLOWEEN



By: Kevin W. Mahoney

Their: Senior Vice President, General Counsel & Secretary

Dated: 07/20/2022, 2022

TERESA MEDINA



Teresa Medina

Dated: _____, 2022

MORGAN THOMSON

Morgan Thomson

Dated: _____, 2022

KYLE BARRETT, as to his individual payment

Kyle Barrett

WE AGREE TO THESE TERMS,

Dated: _____, 2022 SPENCER GIFTS LLC, and
SPIRIT HALLOWEEN SUPERSTORES LLC d/b/a
SPIRIT HALLOWEEN

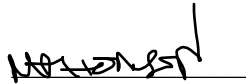
By: Kevin W. Mahoney

Their: Senior Vice President, General Counsel & Secretary

Dated: _____, 2022 TERESA MEDINA

Teresa Medina

Dated: 07/19/2022, 2022 MORGAN THOMSON



Morgan Thomson

Dated: _____, 2022 KYLE BARRETT, as to his individual payment

Kyle Barrett

WE AGREE TO THESE TERMS,

Dated: _____, 2022 SPENCER GIFTS LLC, and
SPIRIT HALLOWEEN SUPERSTORES LLC d/b/a
SPIRIT HALLOWEEN

By: Kevin W. Mahoney
Their: Senior Vice President, General Counsel & Secretary

Dated: _____, 2022 TERESA MEDINA

Teresa Medina

Dated: _____, 2022 MORGAN THOMSON

Morgan Thomson

Dated: 07/19/2022, 2022 KYLE BARRETT, as to his individual payment



Kyle Barrett

Settlement Administration Appendix

Event	Deadline
Plaintiffs to file Motion for Preliminary Approval	<i>Settlement Agreement execution + 20 days</i>
Defendant to provide Settlement Administrator with class list	<i>Preliminary Approval Order + 10 days</i>
Settlement Administrator to distribute Notice and Claim Form to Class Members via U.S. Mail and email	<i>Preliminary Approval Order + 24 days</i>
Settlement Administrator to send Reminder via U.S. Mail and email	<i>Preliminary Approval Order + 54 days</i>
Deadline to Object or Opt-Out	<i>Preliminary Approval Order + 69 days</i>
Initial Mailing Bar Date	<i>Preliminary Approval Order + 84 days</i>
Plaintiffs to File Motion for Final Approval	<i>To be set at preliminary approval hearing</i>
Defendant to fund Settlement	<i>Effective Date + 10 days</i>
Settlement Administrator to send Arbitrator-approved Service Awards to Named Plaintiffs	<i>Effective Date + 14 days</i>
Settlement Administrator to send Arbitrator-approved Arbitration Award to Named Plaintiff Teresa Medina	<i>Effective Date + 14 days</i>
Settlement Administrator to send Arbitrator-approved Award to Plaintiff Kyle Barrett	<i>Effective Date + 14 days</i>
Settlement Administrator to transfer Court-approved attorneys' fees and costs to Plaintiffs' Counsel	<i>Effective Date + 14 days</i>
Settlement Administrator to mail settlement checks to Participating Class Members	<i>Effective Date + 30 days</i>
Settlement Administrator to send check cashing reminder via U.S. mail and email	<i>Effective Date + 90 days</i>
Settlement check expiration date	<i>Effective Date + 120 days</i>
Redistribution date	<i>Effective Date + 127 days</i>