

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is made and entered into by and among the following Parties: (i) Breandan Cotter (“Cotter”) and Jack Dinh (“Dinh,” together the “Representative Plaintiffs”), individually and on behalf of the Settlement Class, by and through the undersigned counsel of record; and (ii) Checkers Drive-In Restaurants, Inc. (“Checkers” or “Defendant”), by and through the undersigned counsel of record.

Article I. RECITALS

1.01 On June 6, 2019, Breandan Cotter filed an initial complaint in the United States District Court for the Middle District of Florida (the “Court”) in an action styled *Breandan Cotter v. Checkers Drive-In Restaurants, Inc.*, No. 8:19-cv-01386 (M.D. Fla.). On July 2, 2019, Jack Dinh filed a complaint in the Central District California in an action styled *Jack Dinh v. Checkers Drive-In Restaurants, Inc.*, No. 8:19-cv-01310 (C.D. Cal.). For purposes of settlement, the Parties have agreed to consolidate these matters into the *Cotter* action (the “Litigation”). For the avoidance of any doubt, however, the term “Litigation” shall mean and include all claims asserted in the *Cotter* and *Dinh* actions, as this settlement contemplates the global resolution of all such claims.

1.02 The Complaint asserts claims against Checkers for: Breach of Implied Contract; Negligence; Negligence Per Se; Unjust Enrichment; Declaratory Judgment; Breach of Confidence; and violations of Florida Statute §§ 501.201, *et seq.* (“FDUTPA”). If accepted by the Court, it is anticipated that through the Amended Complaint that allegations of Dinh will be added to the Litigation to assert claims against Checkers for: California Civil Code §§ 1798.80, *et seq.* (the “CRA”); and California Business & Professions Code §§ 17200, *et seq.* (the “UCL”). These claims of Cotter and Dinh arise from third-party criminal attacks on the point of sale systems of certain of Checkers’ independently

owned and operated franchisee restaurants (the “Data Breach Incident,” as further defined in Article II below).

1.03 Representative Plaintiffs believe the claims asserted in the Litigation, as set forth in the Complaint, have merit. Representative Plaintiffs and Proposed Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Checkers 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 Defendant. Proposed Class Counsel are highly experienced in class action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Representative Plaintiffs and the Settlement Class.

1.04 Checkers denies all material allegations of the Complaints. Checkers specifically denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation, including any claim that it is liable in any way for the criminal third-party attacks on certain point of sale systems of its independently owned and operated franchisees and that Representative Plaintiffs and putative class members are entitled to any relief from Checkers. Nevertheless, Checkers has concluded that continued litigation would be protracted and expensive, and that it is desirable to fully and finally settle the Litigation in light of the risks, uncertainties, burden, and expense of continued litigation. Accordingly, Checkers has agreed to settle this Litigation on the terms set forth in this Agreement, subject to Court approval.

1.05 This Agreement resulted from good faith, arm's-length settlement negotiations, including a full-day mediation session before Steve Jaffe, Esq. in Miami, Florida. Prior to this mediation, Defendant provided Representative Plaintiffs with limited informal discovery (660 pages) on a confidential basis and subject to a stipulated protective order issued in the *Cotter* matter. The discovery produced included: (1) franchise agreements for several locations affected by the Data Breach Incident, which are believed to be representative of the franchise agreements of the approximately 105 affected locations; (2) the approximate number of 1,500,000 payment card transactions affected by the Data Breach Incident; (3) the number and identity of the 105 affected restaurants; (4) information concerning what consumer contact information Checkers maintains; and, (5) the Mandiant Report dated August 5, 2019 concerning the Data Breach Incident. Checkers was also forthcoming about its current financial and corporate affairs.

1.06 Proposed Class 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 a representation by Checkers, there are up to approximately 1,500,000 total payment card transactions potentially affected by the Data Breach Incident. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty and cost of further prosecution of this Litigation, the financial status of Checkers, and the substantial benefits to be received by the Settlement Class pursuant to this Agreement, that a settlement with Checkers on the terms set forth in this Agreement is fair, reasonable, adequate and in the best interests of the nationwide putative class.

1.07 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.

1.08 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 Checkers and the Released Persons (as defined in Article II below) arising out of or relating to the Data Breach Incident, by and on behalf of the Representative Plaintiffs and Settlement Class Members (as defined in Article II 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

In addition to the terms defined at various points within this Settlement Agreement, the following defined terms apply throughout this Settlement Agreement:

2.01 "Affected Restaurant" means any of the approximately 105 Checkers and Rally's restaurant locations affected by the Data Breach Incident as defined in ¶ 2.15 below.

2.02 "Affected Franchisee" means any past or current franchisee of Checkers or Rally's that owned and operated an Affected Restaurant pursuant to a franchise arrangement with Checkers.

2.03 "Amended Complaint" means the First Amended Class Action Complaint filed in the Litigation (ECF No. 40) or any subsequently filed amended pleading by Plaintiff or Plaintiffs in the Litigation.

2.04 “Approved Claims” means Settlement Claims completed using a Claim Form found to be timely and valid by and in an amount approved by the Settlement Administrator.

2.05 “Checkers” or “Defendant” means Defendant Checkers Drive-In Restaurants, Inc.

2.06 “Checkers Restaurant” means any Affected Restaurant owned and operated by Checkers.

2.07 “Claims Administration” means the processing of Claim Forms received from Settlement Class Members, including but not limited to the receipt and processing of Settlement Claims, and the processing of payment of Approved Claims by the Settlement Administrator, as well as any other duties and obligations of the Settlement Administrator as set forth in the Settlement.

2.08 “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 Article III 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 120th day after the Preliminary Approval Date.

2.09 “Claim Form” shall mean the claim form made available to Settlement Class Members substantially in the form of **Exhibit D**, hereto. The Claim Form must be submitted physically (*via* U.S. Mail) or electronically (*via* the Settlement Website) by Settlement Class Members who wish to submit a Settlement Claim. Settlement Class Members who prefer to submit a Claim Form by U.S. Mail may obtain a Claim Form by downloading the print version from the Settlement Website or by calling the Settlement Administrator’s toll-free help line to request a Claim Form be mailed to them.

2.10 “Claimant” means a Settlement Class Member who submits a Claim Form.

2.11 “Claims Period” shall mean the time for Settlement Class Members to submit Settlement Claims, running from the commencement of the Notice Program through the Claims Deadline.

2.12 “Class Counsel” means Tina Wolfson and Bradley K. King of Ahdoot & Wolfson, PC, Jean Sutton Martin of Morgan & Morgan, and Abbas Kazerounian and Jason A. Ibey, Esq. of Kazerouni Law Group, APC.

2.13 “Complaints” means, collectively, the complaints filed in *Cotter* (ECF No. 1 and 40) and *Dinh* (ECF No. 1).

2.14 “Costs of Settlement Administration” means any and all fees, costs, and charges incurred, charged, or invoiced by the Settlement Administrator relating to the administration and notice of the Settlement, including but not limited to: (i) the reasonable costs and expenses that are associated with disseminating notice to the Settlement Class, including, but not limited to, the Class Notice and the performance of the Notice Program, as set forth in Article VI; and (ii) the reasonable costs and expenses that are associated with or arising from the Claims Administration, as set forth in Article XI. The Costs of Settlement Administration shall be paid to the Settlement Administrator as set forth in this Settlement.

2.15 “Data Breach Incident” or “Data Breach” means the third-party criminal cyberattacks of certain of Checkers independently owned and operated franchisee restaurants involving malware variants targeting customers’ payment card information that occurred between approximately December 17, 2015 and October 12, 2019, and was reported by Checkers on May 29, 2019 and November 15, 2019, respectively, and that is the subject of the Litigation and the Complaints.

2.16 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 12.01 herein have occurred and been met.

2.17 “Final Approval Hearing” means the hearing at or after which the Court will determine whether to finally approve the Settlement as fair, reasonable, and adequate under Fed. R. Civ. P. 23(e). Class Counsel shall request that the Court schedule the Final Approval Hearing for a date that is in compliance with the provisions of 28 U.S.C. § 1715(d).

2.18 “Judgment” means a final order and judgment rendered by the Court that, among other things, finally approves the Settlement Agreement and is consistent with ¶ 5.02 and in the form of or materially in the form of the proposed Final Approval Order and Judgment attached as **Exhibit E**.

2.19 “Notice Program” means the method and process of providing notice of the Settlement as described in Article VI.

2.20 “Objection Deadline” means the date by which objections to the Settlement from Settlement Class Members must be postmarked to the Clerk of Court in order to be effective and timely.

2.21 “Opt-Out Deadline” means the date by which requests for exclusion from the Settlement must be postmarked in order to be effective and timely.

2.22 “Parties” means, collectively, Checkers and Representative Plaintiffs, individually and on behalf of the Settlement Class.

2.23 “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.

2.24 “Preliminary Approval Date” means the date on which the Preliminary Approval Order, or any other order(s) preliminarily approving the Settlement, is entered by the Court.

2.25 “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**.

2.26 “Released Persons” means Checkers Drive-In Restaurants, Inc., and their current and former parents, subsidiaries, and divisions, whether indirect or direct, as well as these entities’ respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, reinsurers, and Affected Franchisees. For the avoidance of doubt, “Released Persons” does not include any third-party, unaffiliated vendors.

2.27 “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, 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 (which, as stated above, means and includes all allegations, facts, or circumstances asserted in the *Cotter* and *Dinh* actions) and/or Complaints. For the avoidance of doubt, “Released Claims” does not include any claims arising out of the Data Breach Incident or the allegations, facts, or circumstances described in the Litigation and/or Complaints that Settlement Class Members may have against third party, unaffiliated vendors.

2.28 “Representative Plaintiffs” means Breandan Cotter and Jack Dinh.

2.29 “Settlement Agreement,” “Settlement,” or “Agreement” means this Settlement Agreement and Release and the settlement embodied in this Settlement, including all attached Exhibits (which are an integral part of this Settlement and are incorporated in their entirety by reference).

2.30 “Settlement Claim” means a claim or request for Settlement benefits as provided for in Article III (“Monetary Relief”) of this Settlement Agreement.

2.31 “Settlement Administrator” means Angeion Group, LLC, as selected by Representative Plaintiffs, subject to approval by the Court, 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.

2.32 “Settlement Class” means all residents of the United States who made a credit or debit card purchase at any Affected Restaurant during the period of the Data Breach Incident. The Settlement Class specifically excludes: (i) Checkers 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.

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

2.34 "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, Representative 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 Representative 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 Representative 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 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.

2.35 “Voucher” means a voucher provided under this Settlement that may be used at any Checkers or Rally’s restaurant. Vouchers are subject to the terms and conditions detailed in ¶ 3.01.

Article III. MONETARY RELIEF

3.01 Attested Expense Reimbursement. All Settlement Class Members who submit a valid Settlement Claim on or before the Claims Deadline using the Claim Form (either online via the Settlement Website or by U.S. Mail), copies of which are attached as **Exhibit D** to this Settlement Agreement, and who attest under penalty of perjury that they used a credit or debit card at an Affected Restaurant during the Data Breach Incident, are eligible to receive four (4) Vouchers of \$5.00 each, valid for one (1) year from the date of issuance as pursuant to ¶ 11.02 and freely and fully transferrable.

3.02 Documented Expense Reimbursement. All Settlement Class Members who submit a valid Settlement Claim on or before the Claims Deadline 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 were not reimbursed; (vi) other documented losses that were not reimbursed; and (vii) up to four (4) hours of documented time spent for investigation and remediation relating to the above items in this Paragraph 3.02 (calculated at the rate of \$20.00 per hour).

- a. Settlement Class Members seeking reimbursement under this section ¶ 3.02 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.
- b. As part of the proof of Settlement Claim, Settlement Class Members seeking reimbursement under this section ¶ 3.02 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 Affected Restaurant reflecting payment by a payment card during the Data Breach Incident; a payment card statement reflecting a charge at an Affected Restaurant during the Data Breach Incident; or, notification from a bank or financial institution that a payment card was compromised as a result of the Data Breach Incident.

- c. Settlement Class Members seeking reimbursement for expenses or losses described in ¶ 3.02 must complete and submit the appropriate section of the Claim Form to the Settlement Administrator, together with proof of such losses.
- d. Failure to provide supporting attestation and documentation as requested on the Claim Form shall result in denial of a claim.
- e. If a claim submitted pursuant to ¶ 3.02 is denied for any reason, the claim shall be treated as if it was submitted under ¶ 3.01 and the Settlement Class Member shall receive the compensation provided under ¶ 3.01.

3.03 Claims Process. The Settlement Administrator shall administer the process of reviewing and determining 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 ¶ 3.02; and (3) the information submitted would lead a reasonable person to conclude, for a Settlement Claim for Expense Reimbursement submitted under ¶ 3.02, 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. Class Counsel and Checkers shall have the right to review and obtain supporting documentation, provide input, and/or request corrections if they believe them to be incorrect, inaccurate or inadequate. Class Counsel and Checkers may challenge any claims determined to be valid by the Settlement Administrator by any form of written notice to the Settlement Administrator (“Disputed Valid Claim”).

- 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 or receipt of notice of a Disputed Valid Claim, the Settlement Administrator shall request additional information (*i.e.*, Claim Supplementation) and give the Claimant thirty (30) days to cure the defect or otherwise respond to the notice of a Disputed Valid Claim before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days after the Claims Deadline. [In the event of unusual circumstances interfering with compliance during the 30-day period, the Claimant may request and, for good cause shown (*e.g.*, illness, military service, 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 30-day deadline in which to comply; however, in no event shall the deadline be extended to later than 180 days from the Preliminary Approval Date.] If the defect is not cured or if the Claimant otherwise does not respond to the notice of a Disputed Valid Claim, 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 thirty (30) 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 within the time period provided by ¶ 11.02 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.

3.04 Settlement Expenses. Checkers shall pay for all of the costs associated with settlement administration, including the expenses of the Settlement Administrator for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, as well as the costs of Claims Administration. Attorneys' fees, costs, and expenses of Class Counsel, and service awards to Representative Plaintiffs, shall be paid by Checkers as set forth in Article X below, subject to Court approval.

Article IV. REMEDIAL MEASURES

4.01 Checkers and Affected Franchisees, as appropriate for each, agree to adopt, continue, or maintain the data security measures detailed below following the full execution of the Settlement Agreement:

- a. Checkers and Affected Franchisees will implement mandatory cybersecurity and data privacy training for all managers within its organization, including corporate-owned and franchisee-owned restaurants, over the next two (2) years; and
- b. Checkers and Affected Franchisees will mandate and ensure that each of the restaurants they respectively own and operate implement a solution that encrypts payment card data when it is read by the card acceptance device/point of sale system and routes the authorization message out to the payment card networks without the authorization message data being unencrypted on devices owned and managed by Checkers and/or Affected Franchisees.

4.02 The Parties agree, and hereby stipulate, that Representative Plaintiffs and Class Counsel were the catalyst and predominate factor for remedial measures that Checkers and Affected Franchisees will take or have taken, and which Checkers and Affected Franchisees will continue to implement as described above.

Article V. CONFIRMATORY DISCOVERY

5.01 Within sixty (60) days of the Preliminary Approval Date, Checkers agrees to provide confirmatory discovery as to the investigative efforts and remedial measures undertaken after the Data Breach Incident. The Parties agree that such confirmatory discovery shall take the form of no more than ten (10) interrogatories and a Rule 30(b)(6) deposition of Checkers, limited to a duration of two (2) hours, which may include the following topics: (a) how Checkers identified the Affected Restaurants; (b) how Checkers identified the number of payment card transactions subject to the Data Breach Incident; (c) the process by which Checkers contacts its loyalty customers (“Flav-R-Hood” members); (d) the remedial measures Checkers has already taken, including the development, implementation, and cost of such measures; and (e) the cost of the non-monetary relief Checkers agrees to undertake pursuant to this Agreement.

5.02 Within fourteen (14) days of full execution of this Agreement, Checkers agrees to provide to Class Counsel a declaration from its Chief Financial Officer as to the current financial status of Checkers. Checkers agrees that this declaration shall be provided to the Court, under seal, as part of Plaintiffs’ motion for preliminary approval of the settlement. Checkers further agrees to promptly respond to and provide additional documentation or information as to its financial status as may be requested by the Court through the preliminary and final approval process.

Article VI. PRELIMINARY APPROVAL AND FINAL APPROVAL

6.01 As soon as practicable after the execution of the Settlement Agreement, Class 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 as being within the range of reasonableness such that notice of the Settlement should be provided pursuant to this Agreement;
- (iii) the scheduling of a Final Approval Hearing;
- (iv) appointment of Tina Wolfson and Bradley K. King of Ahdoot & Wolfson, PC, Jean Sutton Martin of Morgan & Morgan, and Abbas Kazerounian and Jason A. Ibey, Esq. of Kazerouni Law Group, APC as Class Counsel;
- (v) appointment of the Representative Plaintiffs as settlement class representatives;
- (vi) approval of the Notice Program;
- (vii) 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 Approval Hearing;
- (viii) appointment of the Settlement Administrator; and
- (ix) approval of a claim form substantially similar to that attached hereto as **Exhibit D**.

6.02. The proposed Final Judgment that shall be filed with the motion for final approval shall be in a substantially similar form as set forth in **Exhibit E** as agreed upon by Checkers 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 satisfied due process requirements;
- (iv) Dismiss all claims in the Complaints 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 Checkers 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 V 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 FED. R. CIV. P. 23, 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 a national print publication, an internet banner ad campaign, notice on a dedicated Settlement Website, and an email to Defendant’s customers in the Flav-R-Hood loyalty program.

- a. No later than thirty (30) days after the Preliminary Approval Date, Defendant shall cause to be published notice of this Agreement in a national print magazine of Defendant’s choosing and Plaintiffs’ approval, which shall include the URL of the Settlement Website.
- b. No later than thirty (30) days after the Preliminary Approval Date, the Settlement Administrator shall commence notice of this Agreement via an internet banner ad

campaign on Facebook and/or other social media and news media platforms, including a direct hyperlink to the Settlement Website.

- c. No later than thirty (30) days after the Preliminary Approval Date, the Settlement Administrator shall establish a dedicated Settlement Website and shall maintain and update the website throughout the Claims Period, with the Publication Notice (Exhibit B), Long Notice (Exhibit C), and Claim Form (Exhibit D) approved by the Court, as well as this Agreement. The Claim Form on the Settlement Website shall make available to Claimants a dropdown menu to select the Affected Restaurant at which they made a credit or debit card purchase during the Data Breach Incident when submitting their Claim Form electronically. 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 the Publication Notice, Long Notice, and Claim Form approved by the Court, as well as this Agreement, upon request. The Settlement Administrator also will provide Spanish-language versions of the Publication Notice and Long Notice on the Settlement Website.
- d. No later than thirty (30) days after the Preliminary Approval Date, the Settlement Administrator shall cause to be emailed notice of this Agreement to Defendant's customers in the Flav-R-Hood loyalty program, including a direct hyperlink to the Settlement Website, as set forth in **Exhibit F**. Defendant shall provide the name and email address of each Flav-R-Hood loyalty member to the Settlement Administrator within fourteen (14) days after the Preliminary Approval Date.

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

7.04 The Publication Notice, Long 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 Approval Hearing, Class Counsel and Checkers' 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 thirty (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 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 one hundred and twenty (120) days from 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 ten (10) days prior to the Final 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.

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 Final Approval 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 objection 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, including whether your objection applies only to you, a specific subset of the class, or the entire class, accompanied by any legal support for the objection the objector believes applicable; (iv) whether the objection applies only to the Settlement Class Member, a specific subset of the Settlement Class, or the entire Settlement Class; (v) the identity of all counsel representing the objector, if any; (vi) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; (vii) 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); and (viii) all class action settlement agreements to which the objector has lodged an objection within the last five (5) years.

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 one hundred and twenty (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 ¶ 8.02 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 ¶ 8.02. 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 Federal Rules of Appellate Procedure and not through a collateral attack.

Article X. RELEASES

10.01 Upon the Effective Date, each Settlement Class Member, including Representative 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 Representative 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.

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 Class Counsel's attorneys' fees, costs, expenses and/or service award to Representative Plaintiffs, as provided for in ¶¶ 10.02 and 10.03, until after the substantive material terms of the settlement had been agreed upon, other than that Checkers would pay reasonable attorneys' fees, costs and expenses, and service awards to Representative Plaintiffs as may be agreed to by Checkers and Class Counsel and/or as ordered by the Court. Checkers and Class Counsel then negotiated and agreed as follows:

11.02 Class Counsel will request from the Court a service award for Representative Plaintiffs in the amount of \$2,500.00 each. Checkers agrees not to object to this request, and to pay the amount the Court awards to Representative Plaintiffs as a service award up to and including \$2,500.00 each. Checkers shall cause to be paid the service awards to Representative Plaintiffs to client trust account(s) established by Class Counsel within thirty (30) days of the Effective Date.

11.03 Class Counsel will request up to \$575,000 from the Court for their combined attorneys' fees, costs, and expenses. Checkers agrees not to object to this request, and to pay the amount the Court awards to Class Counsel in attorneys' fees, costs, and expenses.

11.04 Checkers shall pay the Court-approved amount of attorneys' fees, costs, expenses, to an account established by Class Counsel within thirty (30) days after the entry of an order of Final Judgment, regardless of any appeal that may be filed or taken by any Class Member or third

party. Class Counsel will repay to Checkers the amount of the award of attorneys' fees and costs in the event that the final approval order and judgment are not upheld on appeal and, if only a portion of fees or costs (or both) is upheld, Class Counsel will repay to Checkers the amount necessary to ensure the amount of attorneys' fees or costs (or both) comply with any court order.

11.05 If this Settlement Agreement is terminated or otherwise does not become final (e.g., disapproval by the Court or any appellate court), Checkers shall have no obligation to pay attorneys' fees, costs, expenses, or service awards and shall only be required to pay costs and expenses related to notice and administration that were already incurred. Under no circumstances will Proposed Class Counsel or any Settlement 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 granting leave to amend the Complaint or to add new Representative Plaintiffs or 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 Class Counsel or Representative Plaintiffs shall affect whether the Judgment is final or constitute grounds for cancellation or termination of this Settlement Agreement provided it does not exceed the amount set forth in ¶¶ 10.02 and 10.03 above. Defendant may at its sole discretion terminate this Settlement Agreement on five (5) Business Days written notice from counsel for Defendant to Class Counsel should the Court decide to award more than the amounts of any attorneys' fees, costs and expenses, and/or service awards set forth in ¶¶ 10.02 and 10.03 above. Should Defendant elect to withdraw from and terminate this Settlement Agreement pursuant to

this Paragraph, such withdrawal and termination shall be treated as if final approval was not granted under ¶ 12.04 below.

11.07 Defendant shall have no responsibility for, interest in, or liability whatsoever with respect to any allocation among Class Counsel of attorneys' fees and expenses awarded by the Court.

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 Class Counsel and Checkers. Class Counsel and Checkers 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 Checkers shall be deemed valid up to the amount paid.

12.02 Issuance of Vouchers for Approved Attested Expense Reimbursement Claims (*infra* ¶ 3.01) shall be emailed and payment by check for Approved Documented Expense Reimbursement Claims (*infra* ¶ 3.02) shall be mailed and postmarked within sixty (60) days after the Effective Date, or within thirty (30) days after the date that the Settlement Claim is approved, whichever is latest. After the Effective Date but with sufficient time for Approved Claims to be paid as provided for by this ¶ 11.02, Checkers shall cause to be disbursed to an account as directed by the Settlement Administrator funds sufficient for the Settlement Administrator to pay the Approved Claims.

12.03 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.

12.04 No person shall have any claim against the Settlement Administrator, Released Persons, Class Counsel, Checkers' 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 ¶ 5.01;
- (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 cancelled unless Class Counsel and Checkers' 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 ¶ 10.2 or ¶ 10.4), 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 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, Checkers shall be obligated to pay amounts already billed or incurred for costs of notice to the Settlement Class and Claims Administration and 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.

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 If this Settlement Agreement is terminated pursuant to the above then: this Settlement Agreement will be null and void and will have no force or effect and no Party to this Settlement Agreement will be bound by any of its terms, except for the terms set forth in this paragraph; the Parties will petition to have lifted any stay orders entered pursuant to this Agreement; all of the provisions, and all negotiations, statements, and proceedings relating to it, will be without prejudice to the rights of Defendant, Plaintiffs, or any Settlement Class Member, all of whom will be restored to their respective positions occupied as of November 21, 2019, except that the Parties will cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement; Defendant expressly and affirmatively reserves all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that this Action may not be litigated as a class action; neither this Settlement Agreement, nor the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Settlement Class Member pursuant to this Settlement Agreement, will be admissible or entered into evidence for any purpose whatsoever; any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement will be deemed vacated and will be without any force or effect; and Settlement Class Members, Plaintiffs, and Settlement Class Counsel shall not in any way be responsible or liable for any Settlement Administration expenses or taxes, including costs of notice and administration associated with this Settlement or this

Agreement, except that each Party shall bear its own attorneys' fees and costs and Defendant's future payment obligations shall cease.

13.06 Subject to ¶ 10.06, 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. Subject to ¶ 10.06, 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 Class Counsel or Representative 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, as well as the agreement pursuant to ¶ 10.6, 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 Class Counsel, on behalf of the Settlement Class, is expressly authorized by Representative 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 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.

14.10 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.

14.11 Representative Plaintiffs shall submit their motion for attorneys' fees, costs, and expenses, and for service awards to Representative Plaintiffs, no later than thirty (30) days before the opt-out and objection deadline.

14.12 The Final Approval Hearing shall be scheduled no earlier than 90 days after the notices are made in order to comply with the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715.

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 is a condition precedent to any Settlement Class Member's right to receive settlement benefits. All settlement checks shall be void 60 days after issuance and shall bear the language: "This check must be cashed within 60 days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until 60 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 Checkers shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under paragraph 2.1 or paragraph 2.2 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 60 days after the Effective Date, requests for re-issuance need not be honored after such checks become void.

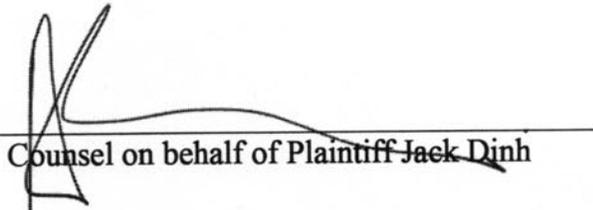
14.16 Each Voucher issued pursuant to this Settlement shall clearly and conspicuously indicate (1) a Five Dollar (\$5.00) value; (2) an expiration date, which is to be one (1) year from the date of issuance pursuant to ¶ 11.02; and (3) the language “Fully and Freely Transferrable.”

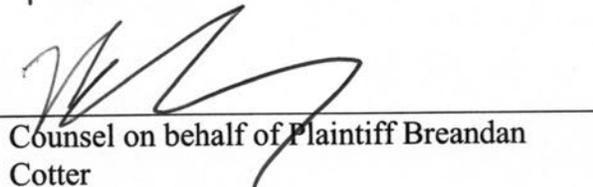
14.17 Any disputes between the Parties regarding the selection of a Settlement Administrator, the form of Class Notice prior to moving for preliminary approval (including the selection of a national print publication and/or internet publication for the banner ad campaign), or the form of the Voucher shall be resolved by Steve Jaffe, Esq.

14.18 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, on this 4th day of May, 2020.

Class Counsel for Representative Plaintiffs
and the Settlement Class


Counsel on behalf of Plaintiff Jack Dinh


Counsel on behalf of Plaintiff Breandan
Cotter

Counsel for Checkers and Duly Authorized
Signatory

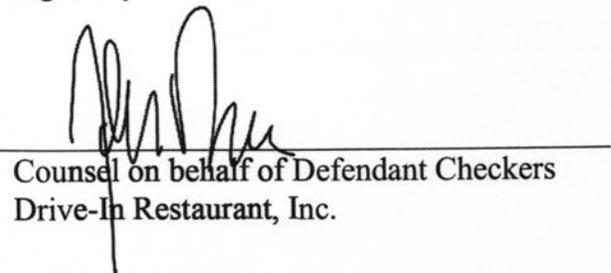

Counsel on behalf of Defendant Checkers
Drive-In Restaurant, Inc.

EXHIBIT A

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BREANDAN COTTER and JACK DINH,
individually and on behalf of others similarly
situated,

Plaintiff,

v.

CHECKERS DRIVE-IN RESTAURANTS, INC.,
a Delaware corporation,

Defendant.

Case No.: 8:19-cv-01386-VMC-CPT
Class Action

**[PROPOSED] ORDER CERTIFYING SETTLEMENT CLASS,
PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT AND
DIRECTING NOTICE TO THE SETTLEMENT CLASS**

This matter came before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion").

Plaintiff Cotter brought this class action case against Checkers Drive-In Restaurants, Inc. ("Defendant" or "Checkers") on June 6, 2019. (Doc. No. 1.) Subsequently, on July 2, 2019, Plaintiff Dinh filed a complaint covering the same subject matter in the Central District California in an action styled *Jack Dinh v. Checkers Drive-In Restaurants, Inc.*, No. 8:19-cv-01310 (C.D. Cal.). For purposes of settlement, the Parties agreed to consolidate these matters into the present *Cotter* action (the "Litigation"). To this end, Plaintiffs Cotter and Dinh filed an amended complaint on _____. (Doc. No. ____.) In the Amended Class Action Complaint ("Complaint"), Plaintiffs asserted claims for breach of implied contract, negligence, negligence per se, unjust enrichment, declaratory judgment, 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”) and California Unfair Competition Law, California Business & Professions Code §§ 17200, *et seq.* (“UCL”).

According to the Complaint, Defendant failed to ensure that access to its data systems was reasonably safeguarded, failed to acknowledge and act upon industry warnings, failed to use proper security systems, and as a result, Class Members’ personally identifiable information (“PII”) was stolen via malicious software installed by unauthorized third parties on the point-of-sale (“POS”) systems at Defendant’s Checkers & Rally’s restaurants from approximately December 17, 2015 and October 12, 2019 (the “Data Breach”). The Complaint also alleges that Defendant failed to provide timely and adequate notice to Plaintiffs and other Class Members that their PII had been stolen. Checkers denies the allegations in the Complaint.

After good faith, arm’s-length negotiations overseen by mediator Steven R. Jaffe, *Esq.*, the Parties, through counsel, entered into a Settlement Agreement and Release (“Settlement Agreement” or “Settlement”) providing significant benefits on a class-wide basis. The Parties have agreed to settle this action, pursuant to the terms of the Settlement Agreement, and subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the Settlement which, if approved, will result in dismissal of this action with prejudice.

The Settlement provides both injunctive and monetary relief. Under the Settlement, Defendant agrees to provide a cash payment for reimbursement of up to \$5,000.00 per Class member for documented out-of-pocket expenses and time spent dealing with the Data Breach or compensation in the form of four (4) vouchers of \$5.00 each that may be redeemed at any Checkers and Rally’s restaurant, for non-documented losses and time spent dealing with the repercussions of the Data Breach. Defendant has also agreed to take remedial, data security measures, including (1) mandatory cybersecurity and data privacy training for all managers within its organization,

including corporate-owned and franchisee-owned restaurants, over the next two years; and (2) ensuring that each corporate-owned and franchisee-owned restaurant will implement a solution that encrypts payment card data when it is read by the card acceptance device/point of sale system and routes the authorization message out to the payment card networks without the authorization message data being unencrypted on devices owned and managed by Defendant or its franchisees.

Having reviewed the Settlement Agreement, including the exhibits attached thereto, and all prior proceedings herein, and for good cause shown, it is hereby ordered that Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement is granted as set forth herein (the "Preliminary Approval Order").

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. **Definitions.** The capitalized terms used in this Preliminary Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.
2. **Class Certification for Settlement Purposes Only.** For settlement purposes only and pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e), the Court provisionally certifies a class in this matter defined as follows:

All residents of the United States who made a credit or debit card purchase at any Affected Restaurant during the period of the Data Breach Incident.

The Settlement Class specifically excludes: (i) Checkers 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.

The Court provisionally finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Representative Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Representative Plaintiffs and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Representative Plaintiffs have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

3. Representative Plaintiffs and Settlement Class Counsel.

Plaintiffs Breandan Cotter and Jack Dinh are hereby provisionally designated and appointed as the Representative Plaintiffs. The Court provisionally finds that the Representative Plaintiffs are similarly situated to absent Class Members and therefore typical of the Settlement Class and will be adequate Representative Plaintiffs.

The Court finds that the following counsel are experienced and adequate counsel and are hereby provisionally designated as Settlement Class Counsel pursuant to Federal Rule of Civil Procedure 23(g): Tina Wolfson and Bradley K. King of Ahdoot & Wolfson, PC, Jean Sutton Martin of Morgan & Morgan Complex Litigation Group, Abbas Kazerounian and Jason Ibey, Esq. of Kazerouni Law Group, APC.

4. Preliminary Settlement Approval. Upon preliminary review, the Court concludes that the proposed Settlement is fair, reasonable, and adequate to warrant providing notice of the

Settlement to the Settlement Class and that the Court will likely be able to grant final approval and accordingly it is preliminarily approved. Specifically, the Court in reaching this conclusion, has considered the factors set forth in Fed. R. Civ. P. 23(e), to determine whether the Settlement Agreement is “fair, reasonable, and adequate,” and hence whether the Court “will likely be able to” finally approve the Settlement, by considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

5. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(a).

6. **Final Approval Hearing.** A Final Approval Hearing shall be held on _____ at _____ in Courtroom 14-B of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida 33602 to determine, among other things, whether: (1) this matter should be finally certified as a class action for settlement purposes pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e); (2) the Settlement should be finally approved as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e); (3) the action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (4) Settlement Class Members should be bound by the releases set forth in the Settlement Agreement;

(5) the motion of Settlement Class Counsel for an award of attorneys' fees, costs, and expenses (the "Fee Request") should be approved pursuant to Federal Rule of Civil Procedure 23(h); and (6) the motion of Representative Plaintiffs for Service Awards (the "Service Award Request") should be approved.

Plaintiffs' motion for final approval of the Settlement, Fee Request, and Service Award Request shall be filed with the Court at least **[45] days prior to the Final Approval Hearing**. By no later than **[21] days prior to the Final Approval Hearing**, the Parties shall file responses, if any, to any objections, and any replies in support of final approval of the Settlement and/or the Service Award Request and Fee Request.

7. **Administration**. The Court appoints Angeion Group, LLC as the Settlement Administrator, with responsibility for class notice and claims administration. Defendant shall pay all costs and expenses associated with providing notice to Settlement Class Members including, but not limited to, the Settlement Administrator's fees.

8. **Notice to the Class**. The proposed Notice Program set forth in the Settlement Agreement, and the Claim Form, Publication Notice, Long Notice and E-Mail Notice attached to the Settlement Agreement satisfy the requirements of Federal Rule of Civil Procedure 23(c)(2)(B) and (e)(1) and are hereby approved. Non-material modifications to these Exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement Agreement.

No later than **30 days from the date of this Order** (the "Notice Date"), the Settlement Administrator shall commence the Notice Program, which shall be completed in the manner set forth in Section VII and Exhibit A of the Settlement Agreement.

9. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Paragraph 8 of this Order and the Settlement Agreement (including the exhibits thereto): (a) will constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including Federal Rule of Civil Procedure 23(c) and (e), and the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Class Members.

10. **Class Action Fairness Act Notice.** Within **10 days after the filing of the motion for preliminary approval**, the Settlement Administrator shall have served or have caused to be served a notice of the proposed Settlement on appropriate officials in accordance with the requirements under the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b).

11. **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit an exclusion request electronically on the Settlement Website, or mail a written notification of the intent to exclude himself or herself from the Settlement Class to the Settlement Administrator at the address provided in the Notice, postmarked no later than **120 days after entry of the Preliminary Approval Order** (the “Opt-Out Deadline”). The written notification must include the individual’s name and address; a statement that he or she wants to be excluded from the Action; and the individual’s signature.

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 Settlement Class Counsel may move to file under seal with the Court no later than **10 days prior to the Final Approval Hearing**.

Any Settlement Class Member who does not timely and validly exclude herself or himself from the Settlement shall be bound by the terms of the Settlement. If Final Judgment is entered, any Settlement Class Member who has not submitted a timely, valid written notice of exclusion from the Settlement Class shall be bound by all proceedings, orders, and judgments in this matter, including but not limited to the Release, including Settlement Class Members who have previously initiated or who subsequently initiate any litigation against any or all of the Released Parties relating to the claims and transactions released in the Settlement Agreement. All Class Members who submit valid and timely notices of exclusion from the Settlement Class shall not be entitled to receive any monetary benefits of the Settlement.

12. **Objections and Appearances.** A Settlement Class Member who complies with the requirements of this paragraph may object to the Settlement, the Service Award Request, or the Fee Request.

(a) Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection. To be timely, written notice of an objection in the appropriate form must be postmarked to the Clerk of the Court at the address listed in the Notice, no later than **120 days after entry of the Preliminary Approval Order** (the “Objection Deadline”).

For an objection to be considered by the Court, the objection must also set forth:

- a. the objector’s full name, address, email address (if any), and telephone number;

- b. information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class;
- c. 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);
- d. a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable;
- e. whether the objection applies only to the Settlement Class Member, a specific subset of the Settlement Class, or the entire Settlement Class;
- f. a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- g. a list of all class action settlement agreements to which the objector has lodged an objection within the last five (5) years.

Any Settlement Class Member who fails to comply with the requirements for objecting in this Paragraph shall waive and forfeit any and all rights he or she may have to object to the Settlement Agreement, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments in this matter, including, but not limited to, the Release in the Settlement Agreement if Final Judgment is entered.

Any Settlement Class Member, including a Settlement Class Member who files and serves a written objection, as described above, may appear at the Final Approval Hearing, either in person or through counsel hired at the Settlement Class Member's expense, to object to or comment on the fairness, reasonableness, or adequacy of the Settlement, the Service Award Request, or the Fee Request. If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, he or she must also identify the attorney(s) representing the objecting Settlement Class Member who will appear at the Final Approval Hearing and include the

attorney(s) name, address, phone number, e-mail address, and state bar(s) to which counsel is admitted, as well as the associated state bar numbers.

If Final Judgment is entered, any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his or her objections and shall be forever barred from making any such objections in this action or in any other proceeding or from challenging or opposing, or seeking to reverse, vacate, or modify any approval of the Settlement Agreement, the Service Award Request, or the Fee Request.

13. **Claims Process and Administration.** The Parties have agreed to a process for assessing and determining the validity and value of claims and a payment methodology to Settlement Class Members who submit a timely, valid claim form. The Court preliminarily approves the Claims Process described in Section 3.03 of the Settlement Agreement, and directs that the Settlement Administrator effectuate the distribution of settlement consideration according to the terms of the Settlement Agreement, should the Settlement be finally approved.

Settlement Class Members who qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If Final Judgment is entered, all Settlement Class Members who qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions in the Settlement Agreement, the Release included in that Agreement, and the Final Judgment.

14. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally

approved by the Court or is terminated in accordance with the Settlement Agreement. In such event, the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

15. **Use of Order.** This Order shall be of no force or effect if Final Judgment is not entered or if there is no Effective Date and shall not be construed or used as an admission, concession, or declaration by or against Defendant of any fault, wrongdoing, breach, liability, or the certifiability of any class. Nor shall this Order be construed or used as an admission, concession, or declaration by or against the Representative Plaintiffs or any other Settlement Class Member that his or her claim lacks merit or that the relief requested is inappropriate, improper, unavailable, or as a waiver by any Party of any defense or claim he, she, or it may have in this litigation or in any other lawsuit.

16. **Stay of Proceedings.** Except as necessary to effectuate this Order, all proceedings and deadlines in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Judgment, or until further order of this Court.

17. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

18. **Summary of Deadlines.** The preliminarily approved Settlement shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement Agreement and this Order include but are not limited to:

1. **Notice Deadline:** _____
[30 days after entry of this Order]

2. **Opt-Out and Objection Deadlines:** _____
[120 days after entry of this Order]

3. **Claims Deadline:** _____
[120 days after entry of this Order]

4. **Motion for Final Approval:** _____
[21 days before the Final Approval Hearing]

5. **Motion for Service Awards, Attorneys' Fees and Costs:** _____
[45 days before the Final Approval Hearing]

6. **Final Approval Hearing:** _____
[No earlier than 150 days after entry of this Order]

The dates set in this Order should be used as appropriate in the Notices to the Class.

IT IS SO ORDERED this _____ day of _____, 2020.

Honorable Virginia M. Hernandez Covington
United States District Judge

EXHIBIT B

LEGAL NOTICE

If you used a credit, debit, or other payment card at certain Checkers or Rally's restaurants between December 2015 and October 2019, you may be eligible to receive benefits from a class action settlement.

A Settlement has been reached with Checkers Drive-In Restaurants, Inc. ("Checkers") in a class action lawsuit arising out of a data security incident reported by Checkers in May 2019 and November 2019, wherein certain of Checkers and Rally's independently owned and operated franchisee restaurants were the target of third-party criminal attacks involving malware variants that targeted customers' payment card information, from on or about December 17, 2015 to October 12, 2019 (the "Data Breach"). The Data Breach potentially resulted in unauthorized access to customer payment card data, such as name, address, card number, expiration date, security and service codes, and other payment card-related information ("Personal Information"). The Settlement includes all residents of the United States who made a credit or debit card purchase at any affected Checkers and Rally's restaurant during the period of the Data Breach. For a list of affected Checkers and Rally's restaurants and the exposure window of the Data Breach for each affected location, go to www.XXXXXXX.com [LINK]. The Settlement provides compensation to Class Members who submit valid claims for reimbursement of up to \$5,000 for certain documented out-of-pocket expenses and lost time that were incurred as a result of the Data Breach, or four (4) restaurant vouchers of \$5.00 each.

The United States District Court for the Middle District of Florida authorized this notice in the case, known as *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.).

Go to www.XXXXXX.com for detailed information about the Settlement, including a list of affected Checkers and Rally's restaurants and the exposure dates for each affected location. [The list should be available on the settlement website, rather than some external site, although the online claim form will have them in dropdown menus.]

WHAT IS THIS ABOUT?

The lawsuit claims that Checkers was responsible for the Data Breach. Checkers denies all of the claims and says it did not do anything wrong. The Court did not decide in favor of either side. Instead, both sides agreed to a settlement. This Settlement is not an admission of wrongdoing or an indication that any law was violated, and no Court has made such a determination.

WHO IS INCLUDED?

You are included in the Settlement if you reside in the United States and made a credit, debit or other payment card purchase at any affected Checkers or Rally's restaurant during the period of the Data Breach ("Settlement Class Members").

WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement provides two types of relief to people who submit valid claims. You may submit a claim for either:

- (1) Reimbursement of up to \$5,000 for certain documented unreimbursed out-of-pocket expenses and lost time (up to 4 hours at \$20/hour) that resulted from the Data Breach; or,
- (2) Compensation in the form of four (4) restaurant vouchers of \$5.00, valid for one (1) year and freely transferrable, for non-documented losses and time spent dealing with the repercussions of the Data Breach.

Checkers will also pay Court-awarded attorneys' fees, costs and expenses up to \$575,000 and service awards up to \$2500 each to the Representative Plaintiffs.

HOW DO YOU GET A PAYMENT OR VOUCHERS?

To get a payment or vouchers, you must submit a Claim Form by **Month Day, Year**. Claim Form are available at www.XXXXXX.com or by calling XXXXXXXX.

WHAT ARE YOUR OPTIONS?

If you do not want to be legally bound by the Settlement, you must exclude yourself from it by **Month Day, Year**, or you will not be able to sue, or continue to sue, Checkers about the legal claims this Settlement resolves. If you exclude yourself, you cannot get payments or vouchers from the Settlement.

If you stay in the Settlement Class, you can tell the Court that you do not agree with the Settlement or some part of it by objecting to it by **Month Day, Year**.

The Long Notice available at www.XXXXXX.com explains how to exclude yourself or object and describes the released claims in detail.

WHO REPRESENTS YOU?

The Court appointed Tina Wolfson and Bradley K. King of Ahdoot & Wolfson, PC, Jean Sutton Martin of Morgan & Morgan, and Abbas Kazerounian and Jason Ibey, Esq. of Kazerouni Law Group, APC as Class Counsel to represent the

Settlement Class. Class Counsel will ask the Court for an award for attorneys' fees, costs, and expenses of \$575,000, and service awards up to \$2,500 each for the Representative Plaintiffs Breandan Cotter and Jack Dinh. If you want to be represented by your own lawyer, you may hire one at your own expense.

WHEN WILL THE SETTLEMENT BE APPROVED?

The Court will hold a hearing on **Month Day, Year**, at **TIME** to consider whether to approve the Settlement, and Class Counsel's request for attorneys' fees, costs and expenses, and service awards. You or your own lawyer may ask to appear and speak at the hearing at your own cost, but you do not have to.

WANT MORE INFORMATION?

Visit www.XXXXX.com or call XXXXXXX.

EXHIBIT C

NOTICE OF CLASS ACTION SETTLEMENT

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA

In re: Checkers Data Security Breach Litigation,
Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

If you used a credit or debit card at certain Checkers and Rally’s restaurants between December 2015 and October 2019, you may be eligible to receive benefits from a class action settlement.

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.
Please read this Notice carefully and completely.*

- A Settlement has been proposed in a class action lawsuit against Checkers Drive-In Restaurants, Inc. (“Checkers”), arising out of a data security incident that occurred between December 17, 2015 and October 12, 2019, and reported by Checkers on May 29, 2019 and November 15, 2019.
- From on or about December 17, 2015 to October 12, 2019, certain of Checkers and Rally’s independently owned and operated franchisee restaurants were the target of third-party criminal attacks involving malware that targeted customers’ payment card information (the “Data Breach”). The Data Breach potentially resulted in unauthorized access to customer payment card data, such as name, address, card number, expiration date, security and service codes, and other payment card-related information (“Personal Information”).
- The Settlement includes all residents of the United States who made a credit or debit card purchase at an affected Checkers or Rally’s restaurant during the period of the Data Breach.
- Not all Checkers and Rally’s restaurant locations were affected by the Data Breach; only certain restaurants were affected and at various times. For a list of affected Checkers and Rally’s restaurants and the exposure window of the Data Breach for each affected location, go to www.XXXXXXX.com [LINK].
- The Settlement provides compensation to Class Members who submit valid claims as follows: (i) reimbursement of up to \$5,000 for certain documented out-of-pocket expenses and lost time (up to 4 hours at \$20.00 per hour) that were incurred as a result of the Data Breach; or (ii) compensation in the form of four (4) Vouchers of \$5.00 each that may be redeemed at any Checkers and Rally’s restaurant, for non-documented losses and time spent dealing with the repercussions of the Data Breach.

This Settlement affects your legal rights even if you do nothing.
Questions? Go to www.XXXXXXX.com or call 1-XXX-XXX-XXXX (Toll-Free).

Your legal rights are affected even if you do nothing. Read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form Deadline: Month Day, Year	This is the only way to receive a payment for losses suffered as a result of the Data Breach. For detailed information on how to submit a Claim Form, see Questions 10 through 12 below.
Ask to be Excluded from the Settlement Deadline: Month Day, Year	You will not receive a payment, but you will retain any rights you currently have with respect to Checkers and the issues in this case. This is the only option that allows you to bring your own lawsuit against Checkers related to the Data Breach. For detailed information on how to exclude yourself from the Settlement, see Questions 14 through 16 below.
Object to the Settlement Deadline: Month Day, Year	Write to the Court about why you do not like the Settlement. You may also write the Court to provide reasons why you support the Settlement. For detailed information on how to object to or comment on the Settlement, see Questions 17 and 18 below.
Go to the Final Approval Hearing Month Day, Year	Ask to speak in Court about the fairness of the Settlement. If you wish to speak at the Final Approval Hearing, you must make a request to do so in your written objection or comment.
Do Nothing	Get no payment. Give up rights to submit a claim or bring a different lawsuit against Checkers related to the Data Breach.

- These rights and options – **and the deadlines to exercise them** – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).

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**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

BASIC INFORMATION

1. Why was this Notice issued and why should I read it?

The Court authorized this notice because you may be included in the settlement class and have a right to know about the proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give “final approval” to the Settlement. This notice explains the legal rights and options that you may exercise before the Court decides whether to approve the Settlement.

Judge Virginia M. Hernandez Covington of the United States District Court for the Middle District of Florida is overseeing this case known as *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT. The people who sued are called the Plaintiffs. Checkers is called the Defendant.

2. What is this lawsuit about?

The lawsuit claims that Checkers was responsible for the Data Breach and asserts claims such as: breach of implied contract, negligence, negligence per se, unjust enrichment, declaratory judgment, breach of confidence, and violations of the Florida Deceptive and Unfair Trade Practices Act, and California Unfair Competition Law.

Checkers denies these claims. Checkers claims, among other things, that the restaurants affected by the Data Breach were independently owned by franchisees and were not owned or controlled by Checkers itself. No court has made any judgment or other determination of any wrongdoing or violation of the law.

3. Why is this lawsuit a class action?

In a class action, one or more people called “Class Representatives” or “Representative Plaintiffs” sue on behalf of all people who have similar claims. Together, all of these people are called a “Class” or “Class Members.” In this case, the Representative Plaintiffs are Breandan Cotter and Jack Dinh. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class.

4. Why is there a Settlement?

The Court did not issue a ruling in favor of the Representative Plaintiffs or Checkers. Rather, both sides, with the assistance of a mediator, agreed to a settlement. The Settlement is not an admission that Checkers did something wrong, but rather is a compromise to end the lawsuit. By agreeing to settle, both sides avoid the cost and risk of a trial, and people who submit valid claims will get compensation. The Representative Plaintiffs and their attorneys believe the Settlement is fair, reasonable, and adequate and, thus, best for the Settlement Class.

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

WHO IS IN THE SETTLEMENT?

5. How do I know if I am included in the Settlement?

You are included in the Settlement Class if you reside in the United States and made a credit or debit card purchase at any affected Checkers or Rally's restaurant during the period of the Data Breach. For a list of affected Checkers and Rally's restaurants and the exposure window of the Data Breach for each affected location, go to www.XXXXXXX.com [LINK].

Specifically excluded from the Settlement Class are:

(i) Checkers 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 or who pleads *nolo contendere* to any such charge.

6. What if I am not sure whether I am included in the Settlement?

The Settlement website at [LINK] provides a list of affected Checkers and Rally's restaurant locations and the exposure window of the Data Breach for each affected location. If you are not sure whether you are included in the Settlement, you may call 1-XXX-XXX-XXXX with questions. You may also write with questions to Checkers Settlement Administrator, PO Box XXXX, [City], [State] XXXXX-XXXX.

THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

7. What does the Settlement provide?

The Settlement will provide cash payments and/or Vouchers that may be used at any Checkers or Rally's restaurant to people who submit valid claims.

There are two types of monetary relief that are available: (1) Documented Expense Reimbursement (Question 8) and (2) Attested Expense Reimbursement (Question 9).

You may submit a claim for either type of relief. In order receive cash payment or Vouchers, you must submit a Claim Form on or before the Claims Deadline (Month Day, Year).

8. What payments are available for Documented Expense Reimbursement?

Settlement Class Members are eligible to receive reimbursement of up to \$5,000 (in total) for documented out-of-pocket expenses resulting from the Data Breach, such as:

- costs and expenses spent addressing identity theft or fraud;
- losses caused by restricted access to funds (*i.e.*, costs of taking out a loan, ATM withdrawal fees);

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

- preventative costs including purchasing credit monitoring, placing security freezes on credit reports, or requesting copies of credit reports for review;
- late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, and/or card cancellation or replacement fees;
- unauthorized charges on credit or debit cards that were not reimbursed;
- other documented losses that were not reimbursed; and
- up to four (4) hours of documented time spent remedying issues relating the Data Breach (calculated at the rate of \$20.00 per hour).

Failure to provide the required documentation for the Documented Expense Reimbursement Claim will cause the claim to be treated as an Attested Expense Reimbursement Claim as detailed in Question 9 below.

9. What payments are available for Attested Expense Reimbursement?

Settlement Class Members who attest that they used a credit or debit card at an affected Checkers and Rally's restaurant location during the Data Breach, but do not have documentation to support their claim, are eligible to submit a Claim Form to receive four (4) Vouchers of \$5.00 each, that may be used at any Checkers or Rally's restaurant. Vouchers are valid for one (1) year from the date of issuance and are freely transferrable.

HOW DO YOU SUBMIT A CLAIM?

10. How do I get a payment?

To receive a payment, you must complete and submit a Claim Form. Claim Forms may be submitted online, along with documentation (for Documented Expense Reimbursement claims) at [LINK]. Claim Forms may also be downloaded and printed from [LINK] or requested by mail by calling 1-XXX-XXX-XXXX. Read the instructions carefully, fill out the Claim Form, provide the required documentation, and mail it postmarked no later than **Month Day, Year** to:

Checkers Data Breach Claim Forms
PO Box XXXXX
[City], [State] XXXXX-XXXX

11. How will claims be decided?

The Settlement Administrator will initially decide whether the information provided on each Claim Form is complete and valid. The Settlement Administrator may require additional information. If you do not provide the required documentation for the Documented Expense Reimbursement Claim, your claim will be treated as an Attested Expense Reimbursement Claim. If you do not provide the required information for an Attested Expense Reimbursement Claim, the claim will be considered invalid and will not be paid. Class Counsel and Checkers also will have an opportunity to challenge any claims determined to be valid by the Settlement Administrator.

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

Approved Claims are those submitted in a timely manner and found to be valid, and in an amount approved, by the Settlement Administrator.

12. When will I get my payment?

The Court will hold a hearing on **Month Day, Year** to decide whether to approve the Settlement. If the Court approves the Settlement after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed. Please be patient.

REMAINING IN THE SETTLEMENT

13. What am I giving up as part of the Settlement?

If the Settlement becomes final and you do not exclude yourself from the Settlement, you will remain a Settlement Class Member and you will give up your right to sue Checkers for the claims being resolved by this Settlement. The specific claims you are giving up against Checkers are described in Article X of the Settlement Agreement. You will be “releasing” Checkers and all related people or entities described in Section 2.26 of the Settlement Agreement for claims related to the Data Breach. The Settlement Agreement is available at [LINK].

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. Specifically, as defined in Section 2.27 of the Settlement Agreement, “Released Claims” 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, 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 Complaint.

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

If you have any questions you can talk to the law firms listed in Question 19 for free or you can, of course, talk to your own lawyer.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to be part of this Settlement, but you want to keep the right to sue Checkers about the issues in this case, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

14. If I exclude myself, can I get a payment from this Settlement?

No. If you exclude yourself, you will not be entitled to any benefits from the Settlement, but you will not be bound by any judgment in this case.

15. If I do not exclude myself, can I sue Checkers for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Checkers (and the released persons and entities) for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in this class action, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitations or repose.

16. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must complete and sign a request for exclusion electronically on the Settlement website, or by mailing your request to the Settlement Administrator at the address below. To exclude yourself by mail, send a letter that says you want to be excluded from the Settlement in *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT. Include your name, address, and signature. You must mail your exclusion request postmarked by **Month Day, Year**, to:

Checkers Data Breach Settlement Exclusions
PO Box XXXXX
City, State XXXXX

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court if I do not like the Settlement?

You can tell the Court that you do not agree with all or any part of the Settlement, Class Counsel’s request for attorney’s fees, costs, and expenses, and/or the request for service awards for the Representative Plaintiffs. The Court will consider your views in its decision to approve the

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

Settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuits will continue. To object, you must file a written objection in this case, *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT, with the Clerk of the Court.

Your objection must state: (1) your full name, address, telephone number, and e-mail address (if any); (2) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class; (3) a written statement of all grounds for the objection, including whether your objection applies only to you, a specific subset of the class, or the entire class, accompanied by any legal support for the objection that you believe is applicable; (4) the identity of all counsel representing you, if any; and (5) a statement confirming whether you intend to personally appear and/or testify at the final fairness hearing; (6) your signature and the signature of your duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation).

To be considered, your objection must be **postmarked** to the Clerk of the Court for the United States District Court Middle District of Florida no later than **Month Day, Year**.

Clerk of the Court
United States District Court
Middle District of Florida
Sam M. Gibbons Federal Courthouse
801 North Florida Avenue
Tampa, Florida 33602

18. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like the Settlement and why you do not think it should be approved. You can object only if you are a member of the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class and do not want to receive any payment from the Settlement. If you exclude yourself, you have no basis to object because you are no longer a member of the Settlement Class and the case no longer affects you.

THE LAWYERS REPRESENTING YOU

19. Do I have a lawyer in this case?

Yes. The Court appointed Tina Wolfson and Bradley K. King of Ahdoot & Wolfson, PC, Jean Sutton Martin of Morgan & Morgan, and Abbas Kazerounian and Jason Ibey, Esq. of Kazerouni Law Group, APC as Class Counsel to represent the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

20. How will the lawyers be paid?

Class Counsel will ask the Court for an award for attorneys' fees, costs and expenses of \$575,000, to compensate Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement and will be the only payment to them for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis.

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

Class Counsel will also ask the Court for a service awards up to \$2,500 each for the Representative Plaintiffs Breandan Cotter and Jack Dinh.

Any award for attorneys' fees, costs and expenses for Class Counsel, and service awards to the Representative Plaintiffs must be approved by the Court. The Court may award less than the amounts requested. Class Counsel's papers in support of final approval of the Settlement and their application for attorneys' fees, costs and expenses, and service awards will be filed no later than **Month Day, Year** and will be posted on the Settlement website.

THE COURT'S FAIRNESS HEARING

21. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval hearing at __:__ .m. on **Month Day, Year**, at the Sam M. Gibbons Federal Courthouse, Courtroom 14B, 801 North Florida Avenue, Tampa, Florida 33602. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are timely objections, the Court will consider them and will listen to people who have asked to speak at the hearing if such a request has been properly made. The Court will also rule on the request for an award of attorneys' fees and reasonable costs and expenses, as well as the request for service awards for the Representative Plaintiffs. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check www.XXXXXXXXXXXXXX.com or call 1-XXX-XXX-XXXX.

22. Do I have to attend the hearing?

No. Class Counsel will present the Settlement Agreement to the Court. You or your own lawyer are welcome to attend at your own expense, but you are not required to do so. If you send an objection, you do not have to come to the Court to talk about it. As long as you filed your written objection on time with the Court and submitted it according to the instructions provided in Question 17, the Court will consider it.

23. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must file an objection according to the instructions in Question 17, including all the information required. Your objection must be **postmarked** to the Clerk of the Court for the United States District Court for the Middle District of Florida (Tampa Division) no later than **Month Day, Year**.

IF YOU DO NOTHING

24. What happens if I do nothing?

If you do nothing, you will not get any compensation from this Settlement and after the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit,

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

continue with a lawsuit, or be part of any other lawsuit against Checkers (and other related persons and entities, as specified in the Settlement Agreement) about the Data Breach, ever again.

GETTING MORE INFORMATION

25. How do I get more information?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. A copy of the Settlement Agreement is available at [LINK]. You may also call the Settlement Administrator with questions or to request a Claim Form be mailed to you by calling 1-XXX-XXX-XXXX.

**This Settlement affects your legal rights even if you do nothing.
Questions? Go to www._____.com or call 1-XXX-XXX-XXXX (Toll-Free).**

In re: Checkers Data Security Breach Litigation,
Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

CLAIM FORM FOR CHECKERS DATA BREACH BENEFITS

If you made a credit or debit card purchase at any affected Checkers or Rally’s restaurant during the period of the Data Breach, you are a “Class Member.” As a Class Member, you are eligible to receive monetary relief: in the form of i) reimbursement of up to \$5,000 for certain documented out-of-pocket expenses and lost time (up to 4 hours at \$20.00 per hour) that resulted from the Data Breach, or ii) compensation in the form of four (4) restaurant vouchers of \$5.00 each that may be redeemed at any affected Checkers and Rally’s restaurant, valid for one (1) year and freely transferrable, for non-documented losses and time spent dealing with the repercussions of the Data Breach.

This Claim Form may be submitted online at [www.settlementwebsite.com] or completed and mailed to the address below. Please type or legibly print all requested information, in blue or black ink. Mail your completed Claim Form, along with any supporting documentation, by U.S. Mail to:

Settlement Administrator
Street
City, State

THIS CLAIM FORM MUST BE SUBMITTED ONLINE OR POSTMARKED BY: DEADLINE

CLASS MEMBER INFORMATION

The Settlement Administrator will use this information for all communications regarding this Claim Form and the Settlement. If this information changes prior to distribution of the settlement benefits, you must notify the Settlement Administrator in writing at the address above.

Full Name: _____

Mailing Address: _____

City: _____ State: _____ ZIP: _____

Telephone Number: _____

Email Address (optional): _____

(if provided, we will communicate primarily by email about your claim)

Questions? Go to www.settlementwebsite.com or call 1-xxx-xxx-xxxx.

EXHIBIT D

In re: Checkers Data Security Breach Litigation,
Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

SETTLEMENT BENEFITS

Documented Expense Reimbursement

If you have documentation establishing that you suffered out-of-pocket losses, unreimbursed charges, or time spent remedying issues relating to the Checkers Data Breach, you can make a claim for reimbursement of *up to* \$5,000, including up to 4 hours of documented time at \$20 per hour. You must submit supporting documentation for this claim.

Attested Expense Reimbursement

If you do not have documentation, you will still be eligible to self-certify your losses and time spent remedying issues relating to the Checkers Data Breach. As compensation, you can make a claim to receive four (4) restaurant vouchers of \$5.00 each, which may be redeemed at any Checkers or Rally's restaurant, valid for one (1) year and freely transferrable.

1. Did you use a credit or debit card at an affected Checkers location during the exposure window for that particular location ([click here to see a list of locations and exposure windows](#); or [request a printed version and printed claim form from the Settlement Administrator](#))?

Yes (*Proceed to Question 2*)

No (*You are not eligible to submit a claim*)

2. What is the restaurant number of the Checkers location where you made your purchase (list up to three) and the dates on which you made your purchases (list up to three)?

([click here to see a list of locations and restaurant number](#))

Restaurant Number: ___ ___ ___ ___ Date(s) visited: _____

Restaurant Number: ___ ___ ___ ___ Date(s) visited: _____

Restaurant Number: ___ ___ ___ ___ Date(s) visited: _____

3. Do you have proof of your purchase using a credit or debit card at an affected Checkers location during the exposure window?
(*Examples: purchase receipt, credit card statement, bank statement*)

Yes (*Skip to Question No. 5*)

In re: Checkers Data Security Breach Litigation,
Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

No (*Proceed to Question 4*)

4. If you made a credit or debit card purchase at an affected Checkers location during the Data Breach exposure window for that location, you can make a claim to receive four (4) restaurant vouchers of \$5.00, valid for one (1) year and freely transferrable. You must complete the attestation and sign the Claim Form on the last page.

DOCUMENTED CLAIMS FOR OUT-OF-POCKET LOSSES, UNREIMBURSED CHARGES, OR TIME SPENT REMEDYING ISSUES RELATING TO THE DATA BREACH

5. Do you have documents proving you experienced out-of-pocket losses or unreimbursed charges, or that you spent time remedying issues relating to the Checkers Data Breach? If so, you may submit a claim, with supporting documentation, for up to \$5,000 in out-of-pocket losses, unreimbursed charges, or time spent remedying issues related to the Checkers Data Breach.

Yes (*Proceed to the chart below*)

No (You are not eligible to submit a claim under this category. Complete the information in Question 4 and you will receive four (4) restaurant vouchers of \$5.00, valid for one (1) year and freely transferrable.)

If you fail to provide the required documentation to support a claim under this category (or if the documentation you provide is deemed insufficient by the Settlement Administrator), your claim will be processed under Question 4. You will not be entitled to a cash payment. However, if your claim for undocumented losses is approved, you will still receive four (4) restaurant vouchers of \$5.00 each, redeemable at any Checkers or Rally's restaurant, valid for one (1) year, and freely transferrable.

In re: Checkers Data Security Breach Litigation,
Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Loss	Description of Supporting Documentation (Identify what you are attaching and why)
<input type="checkbox"/> Costs and expenses spent addressing identity theft or fraud as a result of the Checkers Data Breach				<i>Examples: Receipt or account statement reflecting fuel costs for driving to bank or filing police report that relate to some other documentation provided; Receipt for hiring service to assist you in addressing identity theft</i>
<input type="checkbox"/> Losses caused by restricted access to funds (<i>i.e.</i> , costs of taking out a loan, ATM withdrawal fees) as a result of the Checkers Data Breach				<i>Examples: Account statement with ATM withdrawal fee highlighted; Loan agreement or bank statement with additional interest paid highlighted</i>
<input type="checkbox"/> Preventative costs including purchasing credit monitoring, placing security freezes on credit reports, or requesting copies of credit reports for review				<i>Example: Receipts or account statements reflecting purchases made for credit monitoring services or to place a credit freeze</i>

In re: Checkers Data Security Breach Litigation,
 Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

as a result of the Checkers Data Breach				
<input type="checkbox"/> Late fees, declined payment fees, overdraft fees, returned check fees, customer service fees, and/or card cancellation or replacement fees as a result of the Checkers Data Breach				<i>Example: Account statements reflecting overdraft fees</i>
<input type="checkbox"/> <u>Documented</u> time spent remedying issues relating to the Checkers Data Breach		Number of Hours Spent _____ (max = 4 hours)	Describe what you did	<i>Example: Phone bill reflecting time spent on phone with bank. You may make a claim for up to 4 hours of <u>documented</u> time at \$20 per hour total.</i>
<input type="checkbox"/> Unauthorized charges on credit or debit card reasonably caused by the Checkers Data Breach that were not reimbursed or other fraud losses reasonably caused by the Checkers Data Breach				The following is required to recover for this category of loses: (1) a copy of the statements that show the fraudulent charges, and (2) correspondence from financial institution declining to reimburse you the charges. If you do not have written correspondence, provide in writing the approximate date that you reported and to whom you reported the fraudulent charge.

In re: Checkers Data Security Breach Litigation,
Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.)

<input type="checkbox"/> Other (provide detailed description)				<i>Please provide detailed description and supporting documentation</i>

ATTESTATION AND SIGNATURE

I do hereby swear (or affirm), under penalty of perjury, that the information provided above is true and accurate to the best of my knowledge and that the compensation I am claiming is based on losses I reasonably believe to the best of my knowledge were the result of the Checkers Data Breach.

Name: _____

Signature: _____

Date: _____

EXHIBIT E

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BREANDAN COTTER and JACK DINH,
individually and on behalf of others similarly
situated,

Plaintiff,

v.

CHECKERS DRIVE-IN RESTAURANTS, INC.,
a Delaware corporation,

Defendant.

Case No.: 8:19-cv-01386-VMC-CPT
Class Action

[PROPOSED] FINAL APPROVAL ORDER AND JUDGMENT

This matter came before the Court on Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement and entry of final judgment ("Motion").

On _____, the Court entered an Order preliminarily approving the proposed Settlement pursuant to the terms of the Parties' Settlement Agreement and directing that notice be given to the Settlement Class (the "Preliminary Approval Order").

On _____, pursuant to the notice requirements set forth in the Settlement Agreement and the Preliminary Approval Order, the Settlement Class was notified of the terms of the proposed Settlement Agreement, of the right of Settlement Class Members to opt-out, and the right of Settlement Class Members to object to the Settlement Agreement and to be heard at a Final Approval Hearing.

On _____, the Court held a Final Approval Hearing to determine, inter alia: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable, and adequate for the release of the claims contemplated by the Settlement Agreement; and (2) whether judgment should be entered dismissing

this action with prejudice. Therefore, the Court is satisfied that Settlement Class Members were properly notified of their right to appear at the Final Approval Hearing in support of or in opposition to the proposed Settlement Agreement, the award of attorneys' fees and costs to Class Counsel, and the payment of Service Awards to the Representative Plaintiffs.

Having given an opportunity to be heard to all requesting persons in accordance with the Preliminary Approval Order, having heard the presentation of Class Counsel and counsel for Defendant, having reviewed all of the submissions presented with respect to the proposed Settlement Agreement, having determined that the Settlement Agreement is fair, adequate, and reasonable, having considered the application made by Class Counsel for attorneys' fees and costs and expenses, and the application for Service Awards to the Representative Plaintiffs, and having reviewed the materials in support thereof, and good cause appearing:

THIS COURT FINDS AND ORDERS AS FOLLOWS:

1. **Definitions.** The capitalized terms used in this Final Approval Order shall have the same meaning as defined in the Settlement Agreement except as may otherwise be indicated.
2. **Jurisdiction.** The Court concludes that it has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), and personal jurisdiction over the Parties before it for the purposes of the Settlement. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391(a).
3. **Class Certification for Settlement Purposes Only.** For purposes of the Settlement and pursuant to this Final Approval Order and Federal Rules of Civil Procedure 23(b)(3) and (e), the Court certifies a class in this matter defined as follows:

All residents of the United States who made a credit or debit card purchase at any Affected Restaurant during the period of the Data Breach Incident.

The Settlement Class specifically excludes: (i) Checkers 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.

The Court finds, for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members would be impracticable; (b) there are issues of law and fact common to the Settlement Class; (c) the claims of the Representative Plaintiffs are typical of and arise from the same operative facts and seek similar relief as the claims of the Settlement Class Members; (d) the Representative Plaintiffs and Settlement Class Counsel will fairly and adequately protect the interests of the Settlement Class as the Representative Plaintiffs have no interests antagonistic to or in conflict with the Settlement Class and have retained experienced and competent counsel to prosecute this matter on behalf of the Settlement Class; (e) questions of law or fact common to Settlement Class Members predominate over any questions affecting only individual members; and (f) a class action and class settlement is superior to other methods available for a fair and efficient resolution of this controversy.

4. Representative Plaintiffs and Settlement Class Counsel. Plaintiffs Breandan Cotter and Jack Dinh are hereby designated and appointed as the Representative Plaintiffs. The Court finds that the Representative Plaintiffs are similarly situated to absent Class Members and therefore typical of the Class and will be adequate Settlement Class Representatives.

The Court finds that the following counsel are experienced and adequate counsel and are hereby designated as Settlement Class Counsel pursuant to Federal Rule of Civil Procedure 23(g): Tina Wolfson and Bradley K. King of Ahdoot & Wolfson, PC, Jean Sutton Martin of Morgan & Morgan Complex Litigation Group, Abbas Kazerounian and Jason Ibey, Esq. of Kazerouni Law Group, APC.

5. **Settlement Approval.** The Court concludes that the proposed Settlement is fair, reasonable, and adequate and accordingly it is finally approved. Specifically, the Court in reaching this conclusion, has considered the factors set forth in Fed. R. Civ. P. 23(e), in determining that the Settlement Agreement is “fair, reasonable, and adequate,” by considering whether:

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm’s length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney’s fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

6. **Effectiveness of the Agreement.** The Parties shall effectuate the Settlement Agreement in accordance with its terms. The Settlement Agreement and every term and provision thereof shall be deemed incorporated herein as if explicitly set forth and shall have the full force of an Order of this Court.

7. **Objections.** The Court has considered all objections to the Settlement, including the objections of _____. The Court finds these objections do not counsel against Settlement approval, and the objections are hereby overruled in all respects. All persons who have not made their objections to the Settlement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

8. **Exclusions.** The Settlement Class, which is bound by this Final Approval Order and Judgment, includes all members of the Settlement Class who did not submit timely and valid

requests to be excluded from the Settlement Class. A list of those putative Settlement Class Members who have timely elected to opt out of the Settlement and the Settlement Class, and who therefore are not bound by the Settlement, this Order and the Judgment to be entered hereon, has been submitted to the Court in the Declaration of _____, filed in advance of the Final Approval Hearing. That list is attached as Exhibit A to this Order. All Settlement Class Members (as permanently certified below) shall be subject to all of the provisions of the Settlement, this Final Approval Order and the Judgment to be entered hereon. Upon the Effective Date, members of the Settlement Class who did not validly and timely exclude themselves from the Settlement Class shall, by operation of this Final Approval Order, have fully, finally, forever, and irrevocably released, relinquished and discharged Defendant from all claims that were or could have been asserted in the Litigation, as specified in Article X of the Settlement Agreement. All such Settlement Class Members shall be bound by the terms of the Settlement Agreement upon entry of this Order.

9. **Appeal.** Notwithstanding the certification of the foregoing Settlement Class and appointment of the Representative Plaintiffs for purposes of effecting the Settlement, if this Order is reversed on appeal or the Settlement is terminated or is not consummated for any reason, the foregoing certification of the Settlement Class and appointment of the Representative Plaintiffs shall be void and of no further effect, and the parties to the proposed Settlement shall be returned to the status each occupied before entry of this Order without prejudice to any legal argument that any of the parties to the Settlement might have asserted but for the Settlement.

10. **Findings and Conclusions Concerning Notice.** The Court finds that the form, content, and method of giving notice to the Settlement Class as described in Article VII of the Settlement Agreement (including the exhibits thereto): (a) was the best practicable notice to the

Settlement Class; (b) was reasonably calculated to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement, including but not limited to their rights to object to or exclude themselves from the proposed Settlement and other rights under the terms of the Settlement Agreement; (c) was reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) met all applicable requirements of law, including Federal Rule of Civil Procedure 23(c) and (e), and met the Due Process Clause(s) of the United States Constitution. The Court further finds that the Notice was written in plain language, used simple terminology, and was designed to be readily understandable by Class Members. The Court finds that Defendant has fully complied with the notice requirements of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

11. **Timing of Relief.** Within the time period set forth in Article XII of the Settlement Agreement, the relief provided for in the Settlement Agreement shall be made available to the various Settlement Class Members submitting valid Claim Forms, pursuant to the terms and conditions of the Settlement Agreement.

12. **Finality of Litigation.** Plaintiffs and Settlement Class Members are hereby permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal or jurisdiction, asserting any claims released pursuant to the Settlement Agreement and this Order, or seeking any award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the Litigation and/or as a result of or in addition to those provided by the Settlement Agreement. In addition, Plaintiffs and each Settlement Class Member are hereby

enjoined from asserting as a defense, including as a setoff or for any other purpose, any argument that if raised as an independent claim would be a Released Claim.

13. **Release of Claims.** With respect to all Released Claims, Plaintiffs and each of the other Settlement Class Members have released, waived, and relinquished 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

14. **Claim and Issue Preclusion.** The terms of the Settlement Agreement, this Final Approval Order and the Judgment to be entered hereon shall have maximum res judicata, collateral estoppel, and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorney's fees, costs, interest or expenses which were or could have been asserted in the Litigation or are in any way related to the Data Breach Incident at issue in the Litigation.

15. **Use of Order.** The Final Approval Order, the Judgment to be entered hereon, the Settlement Agreement, the Settlement which it reflects and all acts, statements, documents or proceedings relating to the Settlement are not, and shall not be construed as, used as, or deemed to be evidence of, an admission by or against Defendant of any fault, wrongdoing, or liability on the

part of Defendant or of the validity or certifiability for litigation of any claims that have been, or could have been, asserted in the Litigation. This Order, the Settlement or any such communications shall not be offered or received in evidence in any action or proceeding, or be used in any way as an admission or concession or evidence of any liability or wrongdoing of any nature or that Plaintiff, any Settlement Class Member, or any other person has suffered any damage; *provided, however*, that the Settlement, this Order and the Judgment to be entered hereon may be filed in any action by Defendant or Settlement Class Members seeking to enforce the Settlement or the Judgment by injunctive or other relief, or to assert defenses including, but not limited to, res judicata, collateral estoppel, release, good faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settlement's terms shall be forever binding on, and shall have res judicata and preclusive effect in, all pending and future lawsuits or other proceedings as to Released Claims and other prohibitions set forth in this Order that are maintained by, or on behalf of, the Settlement Class Members or any other person subject to the provisions of this Order.

16. Representative Plaintiffs are awarded Service Awards of \$ _____ each, such amounts to be paid by Defendant in accordance with the terms of the Settlement Agreement.

17. Settlement Class Counsel is awarded attorneys' fees in the amount of \$ _____ and costs in the amount of \$ _____, such amounts to be paid by Defendant in accordance with the terms of the Settlement Agreement.

18. **Dismissal of Litigation.** The above-captioned Litigation is hereby dismissed in its entirety with prejudice. This Final Approval Order shall constitute a final judgment pursuant to Rule 45 of the Federal Rules of Civil Procedure. Without affecting the finality of this Final Approval Order in any way, the Court reserves jurisdiction over all matters relating to the

interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

IT IS SO ORDERED this _____ day of _____, 2020.

Virginia M. Hernandez Covington
United States District Court Judge

EXHIBIT F

NOTICE OF CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT
THE COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER.

YOU MAY RECEIVE PAYMENT FROM A SETTLEMENT.

- **If you reside in the United States and used a credit or debit card at certain Checkers and Rally's restaurants between December 2015 and October 2019, you may be eligible to receive benefits from a class action settlement.**
- **From on or about December 17, 2015 to October 12, 2019, certain of Checkers and Rally's independently owned and operated franchisee restaurants were the target of third-party criminal attacks involving malware variants that targeted customers' payment card information (the "Data Breach"). The Data Breach potentially resulted in unauthorized access to customer payment card data, such as name, address, card number, expiration date, security and service codes, and other payment card-related information ("Personal Information").**
- **Not all Checkers and Rally's restaurant locations were affected by the Data Breach; only certain restaurants were affected and at various times. For a list of affected Checkers and Rally's restaurants and the exposure window of the Data Breach for each affected location, go to [www.settlementwebsite.com].**
- **Checkers denies that it did anything wrong, and the Court has not decided who is right or wrong. Instead the parties have agreed to settle the case to avoid the risk and cost associated with further litigation.**
- **The Settlement provides compensation to Class Members who submit valid claims. The form of compensation will vary depending on whether the Class Members have documented losses.**
- **Go to [www.settlementwebsite.com] for more details.**

What is this? This is a Notice of a proposed settlement in a class action lawsuit. This Notice explains your legal rights. Please read this Notice carefully.

What is this lawsuit about? The Settlement would resolve the lawsuit *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT (M.D. Fla.). The lawsuit claims that Checkers Drive-In Restaurants, Inc. ("Checkers") was responsible for the Data Breach and asserts claims such as: breach of implied contract, negligence, negligence per se, unjust enrichment, declaratory judgment, breach of confidence, and violations of the Florida Deceptive and Unfair Trade Practices Act, California Customer Records Act, and California Unfair Competition Law. Checkers denies these claims. Checkers claims, among other things, that the restaurants affected by the Data Breach were independently owned by franchisees and were not owned or controlled by Checkers itself. No court has made any judgment or other determination of any wrongdoing or violation of the law. and says it did not do anything wrong. The restaurants affected by the Data Breach were independently owned by franchisees and were not owned or controlled by Checkers itself.

Why am I getting this Notice? You were identified as someone who has enrolled in the Checkers Flav-R-Hood loyalty program and has consented to receiving communications from Checkers. You are included in the Settlement Class if you reside in the United States and made a credit, debit, or other payment card purchase at any affected Checkers or Rally's restaurant during the period of the Data Breach.

What does the Settlement provide? The Settlement provides compensation to Class Members who submit valid claims as follows: (i) reimbursement of up to \$5,000 for certain documented out-of-pocket expenses and lost time (up to 4 hours at \$20.00 per hour) that were incurred as a result of the Data Breach; or (ii) compensation in the form of four (4) Vouchers of \$5.00 each that may be redeemed at any Checkers

and Rally's restaurant, for non-documented losses and time spent dealing with the repercussions of the Data Breach.

How do I get a payment? To receive a payment, you must complete and submit a Claim Form. Claim Forms may be submitted online, along with documentation (for Documented Expense Reimbursement claims) at [LINK]. Claim Forms may also be downloaded and printed from [LINK] or requested by mail by calling 1-XXX-XXX-XXXX. Read the instructions carefully, fill out the Claim Form, provide the required documentation, and mail it postmarked no later than **Month Day, Year** to:

Checkers Data Breach Claim Forms
PO Box XXXXX
[City], [State] XXXXX-XXXX

Do I have to be included in the Settlement? If you don't want to receive payment from this Settlement and you want to keep the right to sue or continue to sue Checkers on your own, you must exclude yourself from the Settlement. You will not get any payment from this Settlement if you exclude yourself, but you will not be bound by any judgment in this case. To exclude yourself from the Settlement, you must complete and sign a request for exclusion electronically on the Settlement website, or by mailing your request to the Settlement Administrator at the address above. To exclude yourself by mail, send a letter that says you want to be excluded from the Settlement in *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT. Include your name, address, and signature. You must electronically submit or mail your exclusion request postmarked by **Month Day, Year**.

If I don't like something about the Settlement, how do I tell the Court? You can tell the Court that you do not agree with all or any part of the Settlement. The Court will consider your views in its decision to approve the Settlement. To object, you must submit a written objection in this case, *In re: Checkers Data Security Breach Litigation*, Case No. 8:19-cv-01386-VMC-CPT, with the Clerk of the Court.

Your objection must state: (1) your full name, address, telephone number, and e-mail address (if any); (2) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class; (3) a written statement of all grounds for the objection, including whether your objection applies only to you, a specific subset of the class, or the entire class, accompanied by any legal support for the objection that you believe is applicable; (4) the identity of all counsel representing you, if any; and (5) a statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; (6) your signature and the signature of your duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation).

To be considered, your objection must be **postmarked** to the Clerk of the Court for the United States District Court Middle District of Florida no later than **Month Day, Year**.

Clerk of the Court
United States District Court
Middle District of Florida
Sam M. Gibbons Federal Courthouse
801 North Florida Avenue
Tampa, Florida 33602

What if I do nothing? If you do nothing, you will not get any compensation from this Settlement and after the Settlement is granted final approval and the judgment becomes final, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Checkers (and other related persons and entities, as specified in the Settlement Agreement) about the Data Breach, ever again.

When is the Final Approval Hearing? The Court will hold a Final Approval Hearing at __: __ .m. on **Month Day, Year**, at the Sam M. Gibbons Federal Courthouse, Courtroom 14B, 801 North Florida Avenue, Tampa, Florida 33602. You may go to the hearing, but you do not have to.

How do I get more information about the Settlement? This Notice summarizes the proposed Settlement. A detailed Notice, the Settlement Agreement, other related documents, important dates and deadlines, and other information are available at [LINK]. You may also call the Settlement Administrator with questions or to request a Claim Form be mailed to you by calling 1-XXX-XXX-XXXX.