

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

JOHN BERRY, individually and on  
behalf of all others similarly situated,  
Plaintiff,

v.

REFRESCO BEVERAGES US INC.  
Defendant.

Case No. 8:23-cv-02763-TPB-SPF

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Class Settlement Agreement and Release (“Class Settlement Agreement”) is made and entered into by and among the following Settling Parties (as defined below): (i) Plaintiff John Berry (“Representative Plaintiff” or “Plaintiff”), individually and on behalf of the Settlement Class (as defined below), by and through his counsel (“Representative Plaintiff’s Counsel” or “Class Counsel”), Nicholas A. Migliaccio, Jason S. Rathod, and Saran Q. Edwards of MIGLIACCIO & RATHOD LLP, as well as Scott D. Hirsch of the SCOTT HIRSCH LAW GROUP, PLLC and (ii) Defendant Refresco Beverages US Inc. (“Refresco”), by and through its counsel, Erik R. Matheny of SHUTTS & BOWEN LLP, and Jason C. Kravitz and Leslie E. Hartford of NIXON PEABODY LLP. The Class Settlement Agreement is subject to Court approval and is intended by the Settling Parties to

fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

This class action litigation arose from an alleged data security incident perpetrated by a criminal entity that occurred in or around March 2023 during which there was unauthorized access to Refresco's computer network resulting in access to allegedly sensitive personal information associated with current and former Refresco employees, including Plaintiff. Refresco is a beverage company that manufactures, packages, and distributes various beverages throughout the United States and maintains its principal place of business in Tampa, Florida. In the ordinary course of business, Defendant Refresco collects personally identifiable information ("PII") from its employees.

Plaintiff brought this action individually and on behalf of all persons whose Private Information (as defined herein), he alleged, was compromised and subject to unauthorized access and exfiltration, theft, or disclosure as a direct result of the March 2023 security incident, an event disclosed in or around November 2023 (the "Incident"). The complaint was filed on December 5, 2023, in the United States District Court for the Middle District of Florida, Tampa Division, and pled claims for negligence; breach of contract; breach of implied contract; breach of fiduciary duty; violation of the California Constitution's right to privacy; and violation of Florida's

Deceptive and Unfair Practices Act (“FDUTPA”), Fla. Stat. § 501.201 et seq., and injunctive and declaratory relief.

After a period of informal discovery and mutual exchanges of information, the Parties agreed to participate in mediation. Therefore, on June 14, 2024, the Parties engaged in an arms-length mediation before Bruce A. Friedman of JAMS. Mr. Friedman is a highly sought after and accomplished mediator with a plethora of experience mediating data breach cases. The Parties failed to reach a resolution during the mediation. However, they continued to negotiate, and reached a resolution in principle in November 2024. Subsequently, the Settling Parties began preparing this Settlement Agreement and the associated exhibits, and finalized this Agreement on the date of the signatures found below.

Pursuant to the terms agreed to and set out below, this Class Settlement Agreement resolves all actions, proceedings, and claims against Refresco and the Released Parties that are asserted in, arise from, or relate to Representative Plaintiff’s complaint filed in the Litigation (including, without limitation, all claims that relate to or arise from the Incident), as well as all other actions by and on behalf of individuals or putative classes arising from the matters referenced in that complaint.

#### **I. CLAIMS OF REPRESENTATIVE PLAINTIFF AND BENEFITS OF THE CLASS SETTLEMENT**

Representative Plaintiff believes the claims asserted in the Litigation, as set forth in the Complaint filed in the Litigation, have merit. Representative Plaintiff and

Representative Plaintiff's Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Refresco and the Released Parties through motion practice, trial, and potential appeals. They have also considered the uncertain outcome, particularly in an area which remains in a state of development, and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Representative Plaintiff's Counsel assert that they are highly experienced in class action litigation, particularly in the area of data breach incident litigation, and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Litigation. In addition, Refresco (should this matter proceed), will likely contend that Plaintiff will face difficulties in certifying a class, proving liability and causation, and establishing compensable damages on a class-wide basis. While Representative Plaintiff's Counsel believe Representative Plaintiff would prevail on class certification and liability issues as to Refresco, they nevertheless acknowledge the risks involved in litigation and believe settlement is in the best interests of the Settlement Class. Representative Plaintiff's Counsel has determined that the settlement set forth in this Class Settlement Agreement is fair, reasonable, and adequate, and in the best interests of Representative Plaintiff and the Settlement Class.

## **II. DENIAL OF WRONGDOING AND LIABILITY**

Refresco denies each and all of the claims and contentions alleged against it in the Litigation and believes its defenses have merit. Refresco denies all charges of wrongdoing or liability as alleged, or which could be alleged, in the Litigation. Nonetheless, Refresco has concluded that further Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement. Refresco has also considered the uncertainty and risks inherent in any litigation. Refresco has, therefore, determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement.

## **III. TERMS OF THE SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiff, individually and on behalf of the Settlement Class, and Refresco that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, except as to those Settlement Class Members who timely opt out of the Class Settlement Agreement, upon and subject to the terms and conditions of this Class Settlement Agreement. The Settling Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Settling Parties, the litigation, and the Settlement

Agreement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

## **1. DEFINITIONS**

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

**1.1** “Administration Costs” means all costs and expenses associated with providing notice of the Class Settlement Agreement to the Settlement Class, Claims Administration, and otherwise administering and carrying out the terms of this Class Settlement Agreement.

**1.2** “Agreement,” “Settlement,” “Class Settlement Agreement,” or “Settlement Agreement” means this Class Settlement Agreement and Release.

**1.3** “Attorneys’ Fees and Expenses Award” means such funds as may be awarded by the Court to Settlement Class Counsel to compensate Representative Plaintiff’s Counsel fully and completely for their fees, costs, and expenses in connection with the Litigation.

**1.4** “Claims Administration” means the processing of payments to Settlement Class Members by the Settlement Administrator.

**1.5** “Settlement Administrator” means Simpluris, a company experienced in administering class action claims generally and specifically those of the type

provided for in this Litigation, or, if Simpluris is not approved by the Court, such other company experienced in administering class action claims generally and specifically those of the type provided for in this Litigation that is jointly agreed upon by the Settling Parties and approved by the Court.

**1.6** “Claims Deadline” means the date by which Settlement Class Members must submit their Claim Forms to obtain the benefits offered in this Settlement, and shall be ninety (90) days after the Notice Deadline.

**1.7** “Claim Form” shall mean the form used by Settlement Class Members to file claims for the benefits offered in this settlement, substantially in the form attached hereto as **Exhibit A**, as approved by the Court. The Claim Form may be submitted via U.S. Mail or through the settlement website, [www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com).

**1.8** “Class Notice” means the notice of settlement that is contemplated by this Class Settlement Agreement, and which shall include the long form notice (“Long Notice”) to be posted on the settlement website and a summary notice to be sent via first-class U.S. Mail to the individuals who received formal notice of the Incident from Refresco (“Short Notice”), substantially in the forms attached hereto as **Exhibits B** and **C**, respectively, as approved by the Court.

**1.9** “Effective Date” means the date by which all of the events and conditions specified in Paragraphs 1.10 and 1.11 below for the Final Approval Order

and Judgment to become Final have occurred or have been met. The Effective Date shall not be altered in the event the Court declines to approve, in whole or in part, the Attorneys' Fees and Expenses Award. Further, the Effective Date shall not be altered in the event that an appeal is filed with the sole issue(s) on appeal being the Attorneys' Fees and Expenses Award.

**1.10** "Final" means the occurrence of all of the following events: (a) the settlement pursuant to this Class Settlement Agreement is approved by the Court; (b) the Court has entered a Final Approval Order and Judgment (as that term is defined herein); (c) if there are no objections to the proposed settlement submitted, or any timely objections have been submitted and then withdrawn before entry of the Final Approval Order, the Final Approval Order and Judgment has been entered on the docket, or if an objection to the settlement has been submitted by a member of the Settlement Class found by the Court to have standing to object, thirty-five (35) calendar days have passed since the Court enters the Final Approval Order; and (d) the time to appeal or seek permission to appeal from the Final Approval Order and Judgment has expired and no appeal has been take or, if such an appeal or request for permission to appeal has been filed, the appeal has been dismissed in its entirety, or the Final Approval Order and Judgment has been affirmed in its entirety by the court of last resort to which such appeal may be taken, and such dismissal or affirmance has become no longer subject to further appeal or review; or the Court following



resolution of the appeal enters a further order or orders approving the settlement on the material terms set forth herein and either the time to further appeal from such order has expired and no further appeal is taken from such order(s) or any such appeal has been finally resolved and results in affirmation of such order(s) with no right to pursue further remedies or relief existing. Notwithstanding the foregoing, any order modifying or reversing any Attorneys' Fees and Expenses Award made in this case shall not affect whether the Final Approval Order and Judgment is "Final" as defined herein or any other aspect of the Final Approval Order and Judgment.

**1.11** "Final Approval Hearing" means the final hearing to be conducted by the Court in connection with the determination of the fairness, adequacy, and reasonableness of this Class Settlement Agreement and the proposed settlement of the Litigation.

**1.12** "Final Approval Order and Judgment" means the Court's Order and Judgment Granting Final Approval of Class Action Settlement, which, among other things, approves this Class Settlement Agreement and the settlement of the Litigation as fair, adequate, and reasonable, and confirms the final certification of the Settlement Class, substantially in the form attached hereto as **Exhibit E**.

**1.13** "Incident" means the data breach that occurred between in or around March 2023 as alleged in the Complaint and Litigation filed by Representative Plaintiff during which a criminal gained unauthorized access to Refresco's computer

network and accessed the Private Information (as defined herein) of current and former employees, and that Refresco disclosed to potentially impacted individuals beginning on or about November 2023.

**1.14** “Litigation” means the action filed on December 5, 2023, in the United States District Court for the Middle District of Florida, Tampa Division, by Plaintiff John Berry, and captioned *John Berry, individually and on behalf of all others similarly situated v. Refresco Beverages U.S., Inc.*, Case No. 8:23-cv-02763-TPB-SPF.

**1.15** “Net Settlement Fund” means the amount of funds that remains in the Settlement Fund after funds are paid from or allocated for payment from the Settlement Fund for Settlement Costs.

**1.16** “Cy Pres” means the Refresco USA 401(k) Savings & Retirement Plan.

**1.17** “Notice Deadline” means the date by which notice to the Settlement Class shall be commenced and shall be thirty (30) days after the entry of the Preliminary Approval Order.

**1.18** “Objection Deadline” means sixty (60) days after the Notice Deadline, or such other date set by the Court in the Preliminary Approval Order.

**1.19** “Opt-Out” means a Settlement Class Member (a) who timely submits a properly completed and executed Request for Exclusion, (b) who does not rescind

that Request for Exclusion before the Opt-Out Deadline, and (c) as to whom there is not a successful challenge to the Request for Exclusion.

**1.20** “Opt-Out Deadline” means the date by which Settlement Class Members must mail or submit through the settlement website their Request for Exclusion in order for it to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Deadline shall be sixty (60) days after the Notice Deadline, or such other date set by the Court in the Preliminary Approval Order.

**1.21** “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, affiliates, attorneys, predecessors, successors, representatives, or assignees.

**1.22** “Private Information” means information that may have been exposed, compromised, or accessed during the Incident, including names, dates of birth, Social Security numbers, street addresses, financial account numbers, driver’s license numbers, financial account information, health insurance policy numbers, and certain health information as provided in connection with workers’ compensation and/or ADA accommodations proceedings.

**1.23** “Preliminary Approval Order” means the Court’s order granting, among other things, conditional certification of the Settlement Class, preliminary approval of this Class Settlement Agreement and the settlement of the Litigation, and approval of the form and method of Class Notice, substantially in the form set forth in **Exhibit D**.

**1.24** “Released Claims” means all causes of action and claims for relief that have been asserted, or could have been asserted, by any Settlement Class Member, including Representative Plaintiff, against any of the Released Parties based on, relating to, concerning, or arising out of the Incident, the alleged compromising and/or theft of Private Information as a result of the Incident, and the allegations, facts, or circumstances described in the Complaint and the Litigation including, but not limited to: negligence; breach of contract; breach of implied contract; breach of fiduciary duty; violation of the California Constitution’s right to privacy; and violation of Florida’s Deceptive and Unfair Practices Act (“FDUTPA”), Fla. Stat. § 501.201 *et. seq.*, failure to provide adequate notice pursuant to any breach notification statute or common law duty; and including any claims for relief including, but not limited to: any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, **attorneys’ fees 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. Released Claims shall not include the right of any Settlement Class Member or any of the Released Persons to enforce the terms of the settlement contained in the Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

**1.25** “Released Parties” means Refresco and each of its past, present, and future parents, subsidiaries, divisions, affiliates, predecessors, successors, and assigns, and its past, present, and future directors, officers, employees, agents, insurers, shareholders, owners, attorneys, advisors, consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, and the predecessors, successors, and assigns of each of them.

**1.26** “Releasing Parties” means Plaintiff and all Settlement Class Members who do not timely and properly exclude themselves from the settlement memorialized in this Class Settlement Agreement, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns.

**1.27** “Reminder Notice” means a second notice sent to all Settlement Class Members who have not yet filed a claim, via email and U.S. Mail, in the event the Claims Rate (as calculated by the Settlement Administrator) is less than 3% of the Settlement Class forty-five (45) days prior to the Claims Deadline. The Reminder

Notice will be sent by the Settlement Administrator thirty (30) days prior to the Claims Deadline. Any Reminder Notice will be paid for out of the Settlement Fund.

**1.28** “Request for Exclusion” means a substantially completed and properly executed written request that is timely delivered to the Settlement Administrator by a Settlement Class Member under Paragraph 5 of this Class Settlement Agreement and is postmarked or submitted through the settlement website on or before the Opt-Out Deadline. For a Request for Exclusion to be properly completed and executed, subject to approval by the Court, it should: (a) state the Settlement Class Member’s full name, address, and telephone number; (b) contain the Settlement Class Member’s personal and original signature or the original signature of a person authorized by law to act on the Settlement Class Member’s behalf with respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian, or person acting under a power of attorney; and (c) clearly manifest the Settlement Class Member’s intent to be excluded from the settlement. All Requests for Exclusion must be submitted individually in connection with a Settlement Class Member, *i.e.*, one request is required for every Settlement Class Member seeking exclusion.

**1.29** “Settlement Claim” means a claimant’s claim for relief under the terms of this Class Settlement Agreement.

**1.30** “Settlement Class” means all persons Refresco identified as being among those individuals impacted by the Data Breach, including all who were sent a notice of the Data Breach. Excluded from the Settlement Class are any judge presiding over this matter and any members of their first-degree relatives, judicial staff, Refresco’s officers, directors, and members, and persons who timely and validly request exclusion from the Settlement Class.

**1.31** “Settlement Class Counsel” means Nicholas A. Migliaccio [Jason S. Rathod, and Saran Q. Edwards] of **MIGLIACCIO & RATHOD LLP**, who is designated as lead Settlement Class Counsel, with Scott D. Hirsch of **SCOTT HIRSCH LAW GROUP** as co-Settlement Class Counsel.

**1.32** “Settlement Class Member” means a member of the Settlement Class. The Settling Parties believe that there are approximately 25,170 Settlement Class Members.

**1.33** “Settlement Costs” means all costs of the settlement including the costs of carrying out the Notice Program, as set forth in Paragraph 4 herein, Claims Administration, any Attorneys’ Fees and Expenses Award, and all other expenses or costs related to the Settlement.

**1.34** “Settlement Fund” means a non-reversionary common fund of \$650,000.00, which shall be the only amount paid by Refresco and the sole and exclusive source of all Settlement Costs, award payments to Settlement Class

Members, Administrative Costs, and Attorneys' Fees and Expenses. No portion of the Settlement Fund will revert to Refresco.

**1.35** "Settling Parties" means, collectively, Refresco and Representative Plaintiff, individually and on behalf of the Settlement Class.

**1.36** "Unknown Claims" means any of the Released Claims that Releasing Parties do not know or suspect to exist in their favor at the time of the release of the Released Parties and that, if known by them, might have affected their settlement with, and release of, the Released Parties, or might have affected their decision to participate in this Class Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Releasing Parties expressly shall be deemed to have, and by operation of the Final Approval Order shall have, released any and all Released Claims, including Unknown Claims, and waived the provisions, rights, and benefits conferred by California Civil Code § 1542, and any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States 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.**



Releasing Parties may hereafter discover facts in addition to, or different from, those that they now know or believe to be true with respect to the subject matter of the Released Claims, but Releasing Parties expressly shall be deemed to have, and by operation of the Final Approval Order shall have, upon the Effective Date, fully, finally, and forever settled and released any and all Released Claims including Unknown Claims.

**1.37** All time periods described in this Class Settlement Agreement in terms of “days” shall be in calendar days unless otherwise expressly stated herein.

## **2. SETTLEMENT CONSIDERATION**

**2.1** In consideration for the releases contained in this Class Settlement Agreement, and as a direct result of the Litigation, and without admitting liability for any of the alleged acts or omissions alleged in the Litigation, and in the interests of minimizing the costs inherent in any litigation, Refresco will perform all the following:

**2.2** Refresco agrees to make or cause to be made a payment of Six Hundred and Fifty Thousand Dollars and No Cents (\$650,000.00), to create the Settlement Fund as follows: within 30 days after the later of (a) entry of the Preliminary Approval Order, which shall include an order establishing the Settlement Fund pursuant to Treasury Regulation § 1.468B-1(c)(1) (the “Funding Date”), or (b) receipt from the Settlement Administrator of detailed wire

instructions and a completed W-9 form, Refresco shall cause the sum of Six Hundred and Fifty Thousand Dollars and No Cents (\$650,000.00) to be deposited in an interest-bearing bank escrow account established and administered by the Settlement Administrator (the “Escrow Account”). The Escrow Account shall be held in a Qualified Settlement Fund (defined below) in interest-bearing bank account deposits with commercial banks with excess capital exceeding One Billion Dollars and Zero Cents (\$1,000,000,000.00), with a rating of “A” or higher by S&P and in an account that is fully insured by the United States Government or the FDIC. The Settlement Fund will be used to pay Approved Claims, administrative expenses (to be agreed upon by both parties), and the attorneys’ fee award and costs. For the avoidance of doubt and for purposes of this Settlement Agreement only, Refresco’s liability shall not exceed Six Hundred and Fifty Thousand Dollars and No Cents (\$650,000.00).

**2.3** All interest on the funds held in the Escrow Account shall accrue to the benefit of the Settlement Class, and shall not be subject to withholding and shall, if required, be reported appropriately to the Internal Revenue Service by the Settlement Administrator. The Administrator is responsible for the payment of all taxes.

**2.4** The funds in the Escrow Account shall be deemed a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1 at all

times after the creation of the Escrow Account. All Taxes shall be paid out of the Escrow Account. Defendant, Defendant's Counsel, Plaintiff, and Settlement Class Counsel shall have no liability or responsibility for any of the Taxes incurred. The Escrow Account, as administered by the Settlement Administrator, shall indemnify and hold Defendant, Defendant's Counsel, Plaintiff, and Settlement Class Counsel harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification). For the purpose of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the "administrator" of the Settlement Fund. The Settlement Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in the previous paragraph) shall be consistent with this paragraph and in all events shall reflect that all taxes (including incurred Taxes, any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settlement Administrator shall maintain control over the Settlement Fund and shall be responsible for all disbursements. The Settlement Administrator shall not disburse any portion of the Settlement Fund except as provided in this Agreement and with the written agreement of Settlement Class Counsel and Defendant's Counsel or by

order of the Court. All funds held by the Settlement Administrator shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement or further order of the Court.

**2.5** The Settlement Administrator will agree to make the following compensation from the Settlement Fund available to Settlement Class Members who submit valid and timely claim forms. Claims will be subject to review for completeness and plausibility by a Settlement Administrator.

**Monetary Settlement Benefits.** Settlement Class Members may make a Settlement Claim for reimbursement of Out-of-Pocket Expenses and Documented Extraordinary Losses, including lost time, as further described below.

**2.5.2(a) Out-of-Pocket Expenses.** Settlement Class Members may elect to recover for Out-of-Pocket Expenses up to \$500 (Five Hundred Dollars) upon submission of a claim and supporting documentation, such as, but not limited to, the following: (a) Out-of-pocket expenses incurred as a result of the Data Security Incident, including unreimbursed bank fees (such as card replacement and over-limit fees), interest on short-term loans, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; or (b) Out-of-Pocket Expenses incurred for credit reports, credit freezes, credit monitoring, or other identity theft

insurance product purchased after the Data Security Incident. The Settlement Administrator shall have discretion to determine whether any claimed Out-of-Pocket Expense is fairly traceable to the Incident. Settlement Class Members with Out-of-Pocket Expenses must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation. If a Settlement Class Member does not submit Reasonable Documentation supporting an Out-of-Pocket Expense claim, or if a Class Member’s claim for an Out-of-Pocket Expense is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her claim, the claim will be rejected.

**2.5.2(b) Documented Extraordinary Loss Payment.** Settlement Class Members may submit a claim for a Settlement Payment of up to \$5,000 (Five Thousand Dollars) for reimbursement in the form of a Documented Extraordinary Loss Payment that is beyond the Out-of-Pocket Expenses claimed above. Examples of Extraordinary Losses may include, without limitation, the unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Private Information fairly traceable to the Incident. To receive a Documented Extraordinary Loss Payment, a Settlement

Class Member must choose to do so on their Claim Form and submit to the Settlement Administrator the following: (i) a valid Claim Form electing to receive the Documented Extraordinary Loss Payment benefit; (ii) an attestation regarding any actual and unreimbursed Documented Extraordinary Loss made under penalty of perjury; and (iii) Reasonable Documentation that demonstrates the Documented Loss to be reimbursed pursuant to the terms of the Settlement. The Settlement Administrator shall have discretion to determine whether any claimed Documented Extraordinary Loss is fairly traceable to the Incident. Settlement Class Members with Documented Extraordinary Loss must submit documentation supporting their claims. This can include receipts or other documentation not “self-prepared” by the claimant that documents the costs incurred. “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but can be considered to add clarity or support to other submitted documentation. If a Settlement Class Member does not submit Reasonable Documentation supporting a Documented Extraordinary Loss Payment claim, or if a Class Member’s claim for a Documented Extraordinary Loss Payment is rejected by the Settlement Administrator for any reason, and the Settlement Class Member fails to cure his or her claim, the claim will be rejected.

**2.5.2.(c) Attested Time Spent.** A Settlement Class Member who spent time remedying issues related to the Incident can receive reimbursement for up to

five (5) hours of lost time at a rate of \$20 per hour with an attestation that they spent the claimed time responding to issues raised by the Incident, including but not limited to, (i) changing passwords on potentially impacted accounts; (ii) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (iii) contacting a medical provider or financial institution to discuss suspicious activity; (iv) signing up for identity theft or fraud monitoring; or (v) researching information about the Incident, its impact, or how to protect themselves from harm due to an Incident. No additional documentation shall be required for members of the Settlement Class to receive compensation for Attested Time Spent. Claims made for time spent can be combined with reimbursement for Out-of-Pocket Expenses and Documented Extraordinary Loss.

**2.5.2(d) Assessing Claims.** The Settlement Administrator shall verify that each person who submits a Claim Form is a Settlement Class Member. The Settlement Administrator shall have the sole discretion and authority to determine whether and to what extent documentation for Out-of-Pocket Expenses, Documented Extraordinary Losses, and Attested Time Spent reflect valid Unreimbursed Losses actually incurred that are fairly traceable to the Incident, but may consult with both Settlement Class Counsel and Defendant's Counsel in making individual determinations.

**2.6 Timing of Settlement Benefits.** Within ninety (90) days after: (i) the Effective Date; or (ii) all Claim Forms have been processed subject to the terms and conditions of this Agreement, whichever date is later, the Settlement Administrator shall cause funds to be distributed to each Settlement Class Member who is entitled to funds based on the selection made on their given Claim Form.

**2.7 Order of Distribution of Funds.** The Settlement is designed to exhaust the Settlement Fund. The Settlement Fund shall be used to make payments for the following: (i) Administrative Expenses, (ii) Fee Award and Costs, and (iii) taxes. The remaining amount after the application of the aforementioned payments is hereinafter referred to as the “Net Settlement Fund.” The Settlement Administrator will first apply the Net Settlement Fund to pay valid claims for Documented Extraordinary Loss Payments and Out-of-Pocket Expenses. The amount of the Net Settlement Fund remaining after all Documented Extraordinary Loss Payments and Out-of-Pocket Expenses are made shall be referred to as the “Post DL/OOP Net Settlement Fund.” The Settlement Administrator shall utilize the Post DL/OOP Net Settlement Fund to make all Attested Time Spent payments pursuant to this Section. In the event that more than 10% of the Net Settlement Fund is unclaimed after all claimed Documented Extraordinary Loss Payments, Out-of-Pocket Expenses, and Attested Time Spent are allocated to Class Members who have submitted valid claims, the remaining Post DL/OOP Net Settlement Fund shall be reallocated on a



pro-rata basis to all Class Members who have submitted valid claims for Attested Time Spent such that no more than 10% of the Post DL/OOP Net Settlement Fund shall remain for *cy pres* distribution. In the event that the aggregate amount of all Out-of-Pocket Expenses, Documented Extraordinary Loss Payments, and Attested Time Spent Payments exceeds the total amount of the Net Settlement Fund, then the value of the Out-of-Pocket Expenses, Documented Extraordinary Loss Payments, and Attested Time Spent Payments to be paid to each Class Member shall be reduced, on a pro-rata basis, such that the aggregate value of all Documented Loss Payments does not exceed the Net Settlement Fund. In such an event, no Net Settlement Funds will be distributed to Claimants with Approved Claims for Attested Time Payments. All such determinations shall be performed by the Settlement Administrator.

**2.8 Disputes.** To the extent the Settlement Administrator determines a claim is deficient for a reason other than late posting, within a reasonable amount of time, the Settlement Administrator shall notify the Claimant (with a copy to Settlement Class Counsel) of the deficiencies and notify the Claimant that he or she shall have thirty (30) days to cure the deficiencies and re-submit the claim. No notification is required for late-posted claims. The Settlement Administrator shall exercise reasonable discretion to determine whether the Claimant has cured the

deficient claim. If the Claimant fails to cure the deficiency, the claim shall stand as denied, and the Class Member shall be so notified if practicable.

**2.9 Residual Funds.** To the extent any monies from uncashed checks remain in the Net Settlement Fund more than one hundred-twenty (120) days after the distribution of all Settlement Payments to the Settlement Class Members, a subsequent Settlement Payment will be evenly made to all Settlement Class Members with approved claims for Attested Time Spent Payments who cashed or deposited the initial payment they received, provided that the average check amount is equal to or greater than Three Dollars and No Cents (\$3.00) and more than 10% of the Net Settlement Fund remains unclaimed. The distribution of this remaining uncashed Net Settlement Fund shall continue until the average check or digital payment in a distribution is less than three dollars (\$3.00) and/or no more than 10% of the Net Settlement Fund remains, whereupon the amount remaining in the Net Settlement Fund shall be distributed by mutual agreement of the Parties to the Refresco UA 401(k) Savings & Retirement Plan as a *cy pres* recipient subject to Court approval.

### **3. PRELIMINARY SETTLEMENT APPROVAL AND FINAL APPROVAL**

**3.1** As soon as practicable after the execution of the Class Settlement Agreement, Settlement Class Counsel shall file a motion seeking entry of a Preliminary Approval Order. A proposed Preliminary Approval Order shall be

submitted with the motion and shall be substantially in the form set forth in **Exhibit**

**D.** The motion seeking entry of a Preliminary Approval Order shall request that the Court, *inter alia*:

- a) Stay all proceedings in the Litigation other than those related to approval of the Class Settlement Agreement;
- b) Stay and/or enjoin, pending Final Approval of the Class Settlement Agreement, any actions brought by Settlement Class Members concerning the Released Claims;
- c) Preliminarily certify the Settlement Class for settlement purposes only;
- d) Preliminarily approve the terms of the Class Settlement Agreement as fair, adequate, and reasonable;
- e) Appoint Representative Plaintiff as the Settlement Class representative for settlement purposes only;
- f) Appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;
- g) Approve the Notice Program, as set forth in Paragraph 4 herein, and set the dates for the Opt-Out Deadline, and Objection Deadline;
- h) Approve the form and contents of a Long Notice substantially similar to the one attached hereto as **Exhibit B**, and a Short Notice

substantially similar to the one attached hereto as **Exhibit C**, which together shall include a fair summary of the Settling Parties' respective litigation positions, the general terms of the settlement set forth in the Class Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from the settlement, and the date, time, and place of the Final Approval Hearing;

- i) Appoint Simpluris as Settlement Administrator; and
- j) Schedule the Final Approval Hearing.

**3.2** Refresco will consent to the entry of the Preliminary Approval Order so long as it is substantially in the form attached to this Class Settlement Agreement as **Exhibit D** and is otherwise consistent with this Class Settlement Agreement.

**3.3** Settlement Class Counsel and Refresco shall request that the Court hold a Final Approval Hearing after notice is completed and at least one hundred (100) days after the Notice Date and grant final approval of the Class Settlement Agreement as set forth herein.

**3.4** The proposed Final Approval Order and Judgment that shall be filed with the motion for final approval shall be substantially in the form attached hereto as **Exhibit E** and shall, among other things:

- a) Determine the Class Settlement Agreement is fair, adequate, and reasonable;

- b) Finally certify the Settlement Class;
- c) Determine that the Notice Program, as set forth in Paragraph 4 herein, satisfies due process requirements;
- d) Bar and enjoin any Settlement Class Members who did not timely opt out in accordance with the requirements of this Class Settlement Agreement from asserting any of the Released Claims; and
- e) Release and forever discharge Refresco and the Released Parties from the Released Claims, as provided for in this Class Settlement Agreement.

The motion for final approval and the Final Approval Order and Judgment shall be filed at least fourteen (14) days prior to the objection deadline.

#### **4 NOTICE PROGRAM**

**4.1** Within ten (10) calendar days of entry of the Preliminary Approval Order, Refresco will provide the Settlement Administrator with a list of Settlement Class Members Refresco has been able to identify in such format as requested by the Settlement Administrator which will include, to the extent available, the name and physical mailing address of each Settlement Class Member. The Settlement Administrator shall cause notice to be disseminated to the Settlement Class Members by direct U.S. Mail, pursuant to the Preliminary Approval Order and the Notice Program, as described in Paragraph 4 herein, and in compliance with all applicable

laws including, but not limited to, the Due Process clause of the United States Constitution, and to be effectuated pursuant to the provisions set forth below, the costs of which shall be a Settlement Cost. The Settlement Administrator must maintain the list of Settlement Class Members provided by Refresco pursuant to this Paragraph 4.1 in strict confidence and may not share the list with anyone other than Refresco.

**4.2** Class Notice shall be provided to the Settlement Class as follows:

a) Within thirty (30) days after receiving the list of Settlement Class Members from Refresco, the Settlement Administrator shall send the Short Notice as follows:

- (i) The Settlement Administrator will send the Short Notice (in postcard form) by first-class U.S. Mail, postage prepaid;
- (ii) For any Short Notice (in postcard form) that has been mailed via first-class U.S. Mail and returned by the U.S. Postal Service (“U.S.P.S.”) as undeliverable, the Settlement Administrator shall re-mail the notice to the forwarding address, if any, provided by the U.S.P.S. on the face of the returned mail;

- (iii) Neither the Settling Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed as provided in this Paragraph 4.2; and
- (iv) In the event the Settlement Administrator transmits a Short Notice via first-class U.S. Mail, then the Settlement Administrator shall perform any further investigations deemed appropriate by the Settlement Administrator, including using the National Change of Address (“NCOA”) database maintained by the U.S.P.S., in an attempt to identify current mailing addresses for individuals whose names are provided by Refresco, so long as the costs of such efforts are proportionate with the amount of the estimated payments to such individuals.

b) The Settlement Administrator shall establish a dedicated settlement website that includes this Class Settlement Agreement, the complaint filed in the Litigation, and the Short Notice, Long Notice, and Claim Form approved by the Court, as well as other documents relevant to this matter as agreed upon by the Parties. The Settlement Administrator will also post on the settlement website copies of the motion for final approval of the Class Settlement Agreement, and the motion

for an Attorneys' Fees, Expenses Award and other relevant filings. A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members' inquiries. The settlement website shall not include any advertising and shall remain operational from the Notice Date until one-hundred eighty (180) days following the Effective Date, at which time the Settlement Administrator shall terminate the settlement website and transfer ownership of the URL to Refresco.

c) If the Claims Rate is less than 3% of the Settlement Class, the Settlement Administrator shall send a Reminder Notice to those Class Members who have not yet filed a claim within forty-five (45) days of the Claims Deadline. The Settlement Administrator shall send the Reminder Notice thirty (30) days prior to the Claims Deadline, via email and U.S. Mail.

**4.3** The Short Notice, Long Notice, and Claim Form shall be finalized by the Settling Parties no less than seven (7) days before they are sent to the Settlement Class Members. Plaintiff shall prepare these documents, subject to Refresco's approval, leaving sufficient time for back-and-forth for review and edits.

**4.4** The Short Notice, Long Notice, and Claim Form approved by the Court may be adjusted by the Settlement Administrator in consultation and agreement with the Settling Parties as may be reasonable and necessary, so long as it is not



inconsistent with such approval and does not materially alter the language approved by the Court.

**4.5** Prior to the Final Approval Hearing, counsel for the Settling Parties shall cause to be filed with the Court an appropriate declaration from the Settlement Administrator demonstrating compliance with the Court-approved Notice Program.

**4.6** On behalf of Refresco, the Settlement Administrator will also serve, or cause to be serve, notice to state and territory attorneys general required by the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715, no later than ten (10) days after this Agreement is filed with the Court. The costs of the CAFA notice will be paid from the Settlement Fund.

## **5 OPT-OUT PROCEDURES**

**5.1** Each Settlement Class Member wishing to exclude themselves from the Settlement Class must individually sign and timely mail a written Request for Exclusion to the address designated by the Settlement Administrator.

**5.2** To be effective, a Request for Exclusion must be postmarked no later than sixty (60) days after the Notice Deadline or such other date set by the Court in the Preliminary Approval Order.

**5.3** Within seven (7) days after the Opt-Out Deadline, the Settlement Administrator shall provide the Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement

Class and, upon request, copies of all completed Requests for Exclusions. Settlement Class Counsel may file these materials with the Court, with any Personal Information other than names and cities and states of residence redacted, no later than seven (7) days prior to the Final Approval Hearing.

**5.4** All Persons who opt out of the Settlement Class shall not receive any benefits of or be bound by the terms of this Class Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not opt out shall be bound by the terms of this Class Settlement Agreement and by all proceedings, orders, and judgments in the Litigation.

## **6 OBJECTION PROCEDURES**

**6.1** Each Settlement Class Member who does not file a timely Request for Exclusion may file with the Court a notice of intent to object to the Class Settlement Agreement. The Long Notice shall instruct Settlement Class Members who wish to object to the Class Settlement Agreement to send their written objections to the Settlement Administrator at the address indicated in the Summary Notice and Long Notice. The Long Notice shall make clear that the Court can only approve or deny the Class Settlement Agreement and cannot change the terms. The Long Notice shall advise Settlement Class Members of the deadline for submission of any objections.

**6.2** All notices of an intent to object to the Class Settlement Agreement must be written and should include all of the following:

- a) The objector's full name, address, telephone number, and email address (if any);
- b) The case name and docket number, *Berry v. Refresco Beverages US Inc.*, Case No. 8:23-cv-02763-TPB-SPF;
- c) Information identifying the Settlement Class Member, including proof that he or she is a member of the Settlement Class (e.g., copy of the settlement notice, copy of original notice of the Data Breach, or a statement explaining why he/she believes he/she is a Settlement Class Member);
- d) A clear and detailed written statement that identifies the basis of the specific objection that the Settlement Class Member asserts;
- e) The identity of any and all counsel representing the objector;
- f) A statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel;
- g) A list of proceedings in which he/she has submitted an objection to a class action settlement during the past five years; and
- h) The objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any).

**6.3** Notwithstanding the foregoing, any Settlement Class Member who timely submits a written notice of objection and attends the Final Approval Hearing may so state their objection at that time, subject to the Court's approval.

**6.4** To be timely, written notice of an objection in the appropriate form must be filed or postmarked no later than the Objection Deadline, subject to Court approval.

**6.5** Except upon a showing of good cause, any Settlement Class Member who fails to substantially comply with the requirements in this Paragraph 6 for objecting shall waive and forfeit any and all rights he or he may have to appear separately and/or to object to the Class Settlement Agreement, and shall be bound by all the terms of the Class Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Class Settlement Agreement shall be through the provisions of this Paragraph 6 and not through any collateral attack.

## **7 CLAIMS ADMINISTRATION**

**7.1** The Settlement Administrator shall administer and calculate the payments to Class Members.

**7.2** No Person shall have any claim against the Settlement Administrator, Refresco, the Released Parties, Refresco's counsel, Settlement Class Counsel, Representative Plaintiff's Counsel, and/or the Representative Plaintiff based on

distribution of award payments to Settlement Class Members.

**7.3** The Settlement Administrator shall agree to hold the Settlement Fund in an interest-bearing qualified settlement fund account, and administer the Settlement Fund, subject to the continuing jurisdiction of the Court and from the earliest possible date, as a qualified settlement fund as defined by Treasury Regulation § 1.46B-1 *et. seq.*, and agree to any relation-back election required to treat the Settlement Fund as a qualified settlement fund from the earliest date possible. The Settlement Administrator shall be responsible for filing tax returns and any other tax reporting for or in respect of the Settlement Fund and pay any taxes and tax-related expenses owed by the Settlement Fund out of the Settlement Fund. Except for funding the Settlement Fund, Refresco shall not have any other financial obligation under the Class Settlement Agreement. In addition, under no circumstances will Refresco have any liability for taxes or tax expenses under this Class Settlement Agreement. Funds may be placed in a non-interest-bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the Settlement Fund, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

**7.4** Taxes and Tax-Related Expenses relating to the Settlement Fund, if any, shall be considered Notice and Administrative Expenses and shall be timely

paid by the Settlement Administrator out of the Settlement Fund without prior order of the Court. Further, the Settlement Fund shall indemnify and hold harmless the Parties and their counsel for Taxes and Tax-Related Expenses (including, without limitation, taxes payable by reason of any such indemnification payments). The Parties and their respective counsel have made no representation or warranty, and have no responsibility, with respect to the tax treatment by any Settlement Class Representative or any Settlement Class Member of any payment or transfer made pursuant to this Agreement or derived from or made pursuant to the Settlement Fund. Each Class Representative and Participating Settlement Class Member shall be solely responsible for the federal, state, and local tax consequences to him, her, or it of the receipt of funds from the Settlement Fund pursuant to this Agreement. However, where a Settlement Class Member who is entitled to more than Five Hundred And Ninety-Nine Dollars and No Cents (\$599.00) fails to submit an IRS Form W-9 (or equivalent tax document), the Settlement Administrator shall consult with counsel to determine how to remit payment to the Settlement Class Member (*i.e.*., capped at Five Hundred And Ninety-Nine Dollars and No Cents (\$599.00) or withholding necessary taxes and sending the remainder to the Settlement Class Member).

**7.5 Settlement Payment Methods.** Settlement Class Members will be provided the option to receive any Settlement Payment due to them pursuant to the

terms of this Agreement via various digital methods. In the event that Settlement Class Members do not exercise this option with the Settlement Administrator, they will receive their Settlement Payment via a physical check sent to them by U.S. Mail. No distributions will be made without authorization from the Settling Parties. Award payment checks shall be sent by first-class U.S. Mail. Award payment checks (electronic and paper) shall be valid for a period of sixty (60) days from issuance, and shall state, in words or substance, that the check must be cashed within sixty (60) days, after which time it will become void. In the event an award payment check becomes void, the Settlement Class Member to whom that award payment check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or to any further distribution from the Settlement Fund or to any further recourse against the Released Parties, and the Class Settlement Agreement will in all other respects be fully enforceable against the Settlement Class Member. No later than seventy (70) days from the issuance of the award payment checks, the Settlement Administrator shall take all steps necessary to stop payment on any award payment checks that remain uncashed.

## **8 RELEASES**

**8.1** Upon the Effective Date, the Releasing Parties will be deemed by operation of this Class Settlement Agreement and the Final Approval Order and Judgment to have forever fully, finally, completely, and unconditionally released,

discharged, and acquitted Refresco and the Released Parties from any and all of the Released Claims, and will be deemed to have also released Unknown Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, the Releasing Parties, 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 (other than the participation in the Class Settlement Agreement as provided herein) in which any of the Released Claims or Unknown Claims are asserted.

**8.2** Upon entry of the Final Approval Order and Judgment, the Releasing Parties shall be barred from initiating, asserting, or prosecuting against Refresco and any Released Parties any claims that are released by operation of the Class Settlement Agreement and the Final Approval Order and Judgment.

## **9 THE ATTORNEYS' FEES AND EXPENSES AWARD**

**9.1** Plaintiff will file its motion for final approval at least fourteen (14) days in advance of the objection deadline. On the same date that Plaintiff moves for final approval, and in the same motion, Settlement Class Counsel may seek an attorneys' fee award in an amount not to exceed one-third (or \$216,666.67) of the Settlement Fund. In addition, Settlement Class Counsel may seek their reasonable costs and expenses (approximately \$13,650.75) from the Settlement Fund. The entirety of the



Attorneys' Fees and Expenses Award shall be payable solely from the Settlement Fund. Refresco reserves the right to contest Plaintiff's fee application.

**9.2** Within forty-five (45) days after the Effective Date, the Settlement Administrator shall pay any Attorneys' Fees and Expenses Award from the Settlement Fund to an account designated by Settlement Class Counsel. After the Attorneys' Fees and Expenses Award has been deposited into this account, Settlement Class Counsel shall have sole discretion in allocating such attorneys' fees and costs to Representative Plaintiff's Counsel. Refresco shall have no responsibility for distribution of attorneys' fees or costs among participating firms.

**9.3** No order of the Court or modification or reversal or appeal of any order of the Court concerning the amount of the Attorneys' Fees and Expenses Award hereunder shall affect whether the Judgment is Final or constitute grounds for cancellation or termination of this Class Settlement Agreement.

**9.4** Refresco shall not be liable for any additional attorneys' fees and expenses of Representative Plaintiff's Counsel or Settlement Class Counsel in the Litigation.

**10 CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

**10.1** Refresco's willingness to settle this Litigation on a class-action basis and to agree to the accompanying certification of the Settlement Class is dependent on achieving finality in this Litigation and the desire to avoid the expense of this and

other litigation, unless otherwise expressly provided for in this Class Settlement Agreement. Consequently, Refresco has the right to terminate this Class Settlement Agreement, declare it null and void, and have no further obligations under this Class Settlement Agreement to the Representative Plaintiff, the Settlement Class, or Representative Plaintiff's Counsel/Settlement Class Counsel, unless each of the following conditions occur:

- a) The Court has entered a Preliminary Approval Order;
- b) The Court enters a Final Approval Order and Judgment; and
- c) The Effective Date has occurred.

**10.2** If all of the conditions in Paragraph 10.1 are not fully satisfied and the Effective Date does not occur, this Class Settlement Agreement shall, without notice, be automatically terminated unless Settlement Class Counsel and Refresco's counsel mutually agree in writing to proceed with the Class Settlement Agreement.

**10.3** In the event that the Class Settlement Agreement is not approved by the Court or the Class Settlement Agreement is terminated in accordance with its terms the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval, provided, however, that no party may use subsequent legal developments or other intervening events, other than decision(s) denying or reversing approval of the Agreement, as justification for renegotiating the Settlement. Failing this, (a) the Settling Parties shall be restored to their respective positions in the Litigation and

shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court; (b) Refresco will still bear any costs of notice and administration through the date of termination, and (c) the terms and provisions of the Class Settlement Agreement shall have no further force and effect with respect to the Settling 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 Class Settlement Agreement, including certification of the Settlement Class for settlement purposes only, shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Class Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of any Attorneys' Fees and Expenses Award to Settlement Class Counsel shall constitute grounds for cancellation or termination of the Class Settlement Agreement. To the extent this Settlement Agreement does not become Final, Refresco will be entitled to the return of any amounts not already incurred by the Settlement Administrator.

**10.4** For the avoidance of doubt, Refresco conditionally agrees and consents to certification of the Settlement Class for settlement purposes only, and within the context of the Class Settlement Agreement only. If the Class Settlement Agreement is not fully approved or is otherwise terminated for any reason, Refresco reserves its

right to assert any and all objections and defenses to certification of a class, and neither the Class Settlement Agreement nor anything relating to the Class Settlement Agreement, including any Court orders, shall be offered by any Person as evidence or in support of a motion to certify a class for a purpose other than the settlement set forth in this Class Settlement Agreement.

## **11 THE COURT RETAINS JURISDICTION OVER THE ACTION**

**11.1** The Settling Parties agree that, after entry of Judgment, the Court, at its discretion, will retain jurisdiction over the Settling Parties, the Litigation, and the Settlement Agreement solely for purposes of (i) interpreting, implementing, and enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

## **12 MISCELLANEOUS PROVISIONS**

**12.1** The Settling Parties and their counsel acknowledge that it is their intent to consummate this Class Settlement Agreement and agree to undertake their best efforts to effectuate and implement all terms and conditions of this Class Settlement Agreement, including taking all steps and efforts contemplated by this Class Settlement Agreement, and any other steps and efforts which may become necessary by order of the Court or otherwise.

**12.2** The Settling Parties intend this Class Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation

and with regard to the Released Parties. The Class Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree that the settlement set forth in this Class Settlement Agreement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling 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.

**12.3** Neither the Class Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Class Settlement Agreement: (a) is or may be deemed to be or may be used as an admission, or evidence, of the validity or lack thereof of any of the Released Claims or of any wrongdoing or liability of any of the Released Parties including, but not limited to, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal; or (b) is or may be deemed to be or may be used as an admission, or evidence, of any fault or omission of any of the Released Parties including, but not limited to, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Any of the Released Parties may file the Class Settlement Agreement in any action that may be brought against them or any of

them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**12.4** The Class Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest. Amendments and modifications may be made without additional notice to the Settlement Class Members unless such notice is required by the Court.

**12.5** The Class Settlement Agreement contains the entire agreement between the Settling Parties and supersedes all prior agreements or understandings between them. The terms of the Class Settlement Agreement shall be construed as if drafted jointly by all Settling Parties to this Class Settlement Agreement. The terms of the Class Settlement Agreement shall be binding upon each of the Settling Parties, their agents, attorneys, employees, successors and assigns, and upon all other Persons or entities claiming any interest in the subject matter hereof, including any Settlement Class Member.

**12.6** The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Class Settlement Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or

relating to this Class Settlement Agreement that cannot be resolved by negotiation and agreement by counsel for the Settling Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of the Class Settlement Agreement and shall retain jurisdiction for the purpose of enforcing all terms of the Class Settlement Agreement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Program and the Settlement Administrator. As part of its agreement to render services in connection with this Settlement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

**12.7** The individuals signing this Class Settlement Agreement on behalf of Refresco represent that they are fully authorized by Refresco to enter into, and to execute, this Class Settlement Agreement on its behalf. Representative Plaintiff's Counsel represent that they are fully authorized to conduct settlement negotiations with counsel for Refresco on behalf of Representative Plaintiff, and to enter into, and to execute, this Class Settlement Agreement on behalf of the Settlement Class, subject to Court approval.

**12.8** None of the Settling Parties shall be considered to be the primary drafter of this Class Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**12.9** The Settling Parties agree that, subject to Paragraph 12.3 of this Agreement, this Class Settlement Agreement, and the Final Approval Order and Judgment following from the Class Settlement Agreement, will not prejudice in any way the Settling Parties' right to raise any of the arguments that the Settling Parties made in this case in any future litigation.

**12.10** In the event that any provision hereof, except for the release provisions, becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Class Settlement Agreement shall continue in full force and effect without said provision to the extent Refresco does not exercise its right to terminate under Paragraph 10 of this Class Settlement Agreement.

**12.11** If applicable, within thirty (30) days after Award payments are funded, Settlement Class Counsel shall destroy all confidential, non-public information obtained in connection with the Litigation and Class Settlement Agreement, and certify the same.

**12.12** All notices or formal communications under this Class Settlement Agreement shall be in writing and shall be given (a) by hand delivery, (b) by registered or certified mail, return receipt requested, postage pre-paid, or (c) by overnight courier to counsel for the Settling Party to whom notice is directed at the following addresses, and also send a copy by electronic mail:



Representative Plaintiff's and the Settlement Class Counsel:	Refresco:
<p>Nicholas A. Migliaccio Jason S. Rathod Saran Q. Edwards <b>MIGLIACCIO &amp; RATHOD LLP</b> 412 H St. NE, Suite 302 Washington, D.C. 20002 Telephone: (202) 470-3520 Facsimile: (202) 800-2730 <a href="mailto:nmigliaccio@classlawdc.com">nmigliaccio@classlawdc.com</a> <a href="mailto:jrathod@classlawdc.com">jrathod@classlawdc.com</a> sedwards@classlawdc.com</p> <p>Scott D. Hirsch <b>SCOTT HIRSCH LAWGROUP, PLLC</b> 6810 N. State Road 7, Coconut Creek, FL 33073 Telephone: (561) 569-6283 <a href="mailto:scott@scotthirschlawgroup.com">scott@scotthirschlawgroup.com</a></p>	<p>Erik R. Matheney <b>SHUTTS &amp; BOWEN LLP</b> 4301 West Boy Scout Blvd., Suite 300 Tampa, FL 33607 Telephone: (813) 227-8123 Facsimile: (813) 229-8901 <a href="mailto:EMatheney@shutts.com">EMatheney@shutts.com</a></p> <p>Jason C. Kravitz Leslie E. Hartford <b>NIXON PEABODY LLP</b> 53 State Street Exchange Place Boston, MA 02109 Phone: (617) 345-1000 Fax: (617) 345-1300 <a href="mailto:jkravitz@nixonpeabody.com">jkravitz@nixonpeabody.com</a> <a href="mailto:lhartford@nixonpeabody.com">lhartford@nixonpeabody.com</a></p>

Counsel may designate a change of the person to receive written notice or a change of address, from time to time, by giving written notice to all Settling Parties in the manner described in this Paragraph 12.12.

**12.13** The Representative Plaintiff, Representative Plaintiff's Counsel/Settlement Class Counsel, Refresco and Refresco's counsel may execute

this Class Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all Settling Parties had signed the same instrument. Facsimile and scanned signatures shall be considered as valid signatures as of the date signed. This Class Settlement Agreement shall not be deemed executed until signed by the Representative Plaintiff, all Representative Plaintiff's Counsel/Settlement Class Counsel, and by counsel for and representative(s) of Refresco.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Class Settlement Agreement to be executed on their behalf by their duly authorized counsel of record, all as of the day set forth below:

Dated:

5/1/25

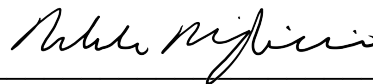
2025



John Berry, *Representative Plaintiff*

Dated:

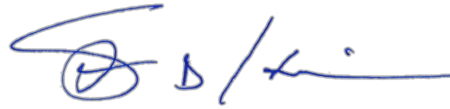
2025



Nicholas A. Migliaccio, *Representative Plaintiff's Counsel and Proposed Settlement Class Counsel*

Dated:

May 2, 2025



\_\_\_\_\_  
Scott D. Hirsch, *Representative Plaintiff's  
Counsel and Proposed Settlement Class  
Counsel*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Refresco, *Defendant*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Erik R. Matheney, *Counsel for Defendant  
Refresco*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Leslie E. Hartford, *Counsel for Defendant  
Refresco*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Scott D. Hirsch, *Representative Plaintiff's  
Counsel and Proposed Settlement Class  
Counsel*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Refresco, *Defendant*

Dated:

May 1  
\_\_\_\_\_,  
2025



\_\_\_\_\_  
Erik R. Matheney, *Counsel for Defendant  
Refresco*

Dated:

May 2  
\_\_\_\_\_,  
2025



\_\_\_\_\_  
Leslie E. Hartford, *Counsel for Defendant  
Refresco*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Scott D. Hirsch, *Representative Plaintiff's  
Counsel and Proposed Settlement Class  
Counsel*

Dated:

May, 2, 2025  
\_\_\_\_\_,  
2025

  
\_\_\_\_\_  
Refresco, *Defendant*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Erik R. Matheney, *Counsel for Defendant  
Refresco*

Dated:

\_\_\_\_\_,  
2025

\_\_\_\_\_  
Leslie E. Hartford, *Counsel for Defendant  
Refresco*

# Exhibit A

**Your claim must be  
submitted online or  
postmarked by:  
[DEADLINE]**

United States District Court, Middle District of Florida  
(Tampa Division)

**CLAIM FORM FOR REFRESCO DATA BREACH BENEFITS**

**BAS  
CLAIM**

COMPLETE, SIGN, AND RETURN THIS CLAIM FORM BY MAIL POSTMARKED NO LATER THAN AN DEADLINE DATE TO [CLAIMS ADMINISTRATOR'S ADDRESS], OR FILE A CLAIM FORM ONLINE AT [WWW.REFRESCODATABREACH.COM] NO LATER THAN DEADLINE DATE.

*You **must** use this form to make a claim for Out-of-Pocket Expenses, Documented Extraordinary Losses, or Attested Time Spent.*

Questions? Call 1-XXX-XXX-XXXX or visit  
[[www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com)].

**SETTLEMENT OVERVIEW**

**Compensation for Out-of-Pocket Expenses:** Class Members may elect to recover Out-of-Pocket Expenses up to \$500 (Five Hundred Dollars) upon submission of a claim and supporting documentation, such as, but not limited to, the following: (a) the Out-of-Pocket expenses incurred as a result of the Data Security Incident, including unreimbursed bank fees (such as card replacement and over-limit fees), interest on short-term loans, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; or (b) the Out-of-pocket Expenses incurred for credit reports, credit freezes, credit monitoring, or other identity theft insurance product purchased after the Data Security Incident.

**Compensation for Documented Extraordinary Losses:** Class Members may submit a claim for a Settlement Payment of up to \$5,000 (Five Thousand Dollars) for reimbursement in the form of a Documented Extraordinary Loss Payment that is beyond the Out-of-Pocket Expenses claimed above. Upon submission of a valid Claim Form and supporting documentation, provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Incident; (iii) the loss occurred between March 2023 and the Claims Deadline; (iv) the loss is not already covered by one or more of the normal reimbursement categories; and (v) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance. Extraordinary Losses may include, without limitation, the unreimbursed costs, expenses, losses or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Private Information. To receive reimbursement for any Documented Extraordinary Loss, Settlement Class Members must submit supporting documentation of the loss and a description of how the loss is fairly traceable to the Incident.

**Compensation for Attested Time Spent:** Settlement Class Members may submit a claim to receive reimbursement for up to five (5) hours of time spent remedying issues related to the Incident at a rate of \$20 per hour with an attestation that they spent the claimed time responding to issues raised by the Incident, including but not limited to, (i) changing passwords on potentially impacted accounts; (ii) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (iii) contacting a medical provider or financial institution to discuss suspicious activity; (iv) signing up for identity theft or fraud monitoring; or (v) researching information about the Incident, its impact, or how to protect themselves from harm due to the Incident. No additional documentation shall be required for members of the Settlement Class to receive compensation for attested time spent.

**Failure to provide all required information will result in your claim being rejected by the Settlement Administrator.**

**Your claim must be  
submitted online or  
postmarked by:  
[DEADLINE]**

United States District Court, Middle District of Florida  
(Tampa Division)

**CLAIM FORM FOR REFRESCO DATA BREACH BENEFITS**

**BAS  
CLAIM**

**I. SETTLEMENT CLASS MEMBER NAME AND CONTACT INFORMATION**

Provide your name and contact information below. You must notify the Settlement Administrator if your contact information changes after you submit this Claim Form.

<input type="text"/>		<input type="text"/>	
<b>First Name</b>		<b>Last Name</b>	
<input type="text"/>			
<b>Street Address</b>			
<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>City</b>	<b>State</b>	<b>Zip Code</b>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Email Address</b>	<b>Telephone Number</b>	<b>Notice ID Number*</b>	

*\*Failure to add your Notice ID Number will result in denial of your claim. If you received a notice of this Settlement by U.S. mail, your Notice ID Number is on the address panel of the postcard. If you misplaced your notice, please contact the Claims Administrator toll-free at 1-XXX-XXX-XXXX or by emailing [[info@RefrescoDataBreach.com](mailto:info@RefrescoDataBreach.com)].*

**II. COMPENSATION FOR DOCUMENTED OUT-OF-POCKET EXPENSES**

**Complete the chart below if you are claiming reimbursement for a documented Out-of-Pocket Expense. You are eligible for reimbursement of up to \$500 for Out-of-Pocket Expenses.**

<b>Loss Type</b> (Check all that apply)	<b>Date of Loss</b>	<b>Amount of Loss</b>	<b>Description of Expense or Money Spent and Supporting Documents</b> (Identify what you are attaching and why it is related to the Incident. You cannot submit self-prepared documentation.)
<input type="checkbox"/> Unreimbursed losses relating to fraud or identity theft			
<input type="checkbox"/> Professional fees including attorneys' and accountants' fees, and fees for credit repair services			
<input type="checkbox"/> Costs associated with freezing or unfreezing credit with any credit reporting agency			
<input type="checkbox"/> Credit monitoring costs that were incurred on or after March 2023, that you attest were caused or otherwise incurred as a result of the Incident			



**Your claim must be submitted online or postmarked by:**  
**[DEADLINE]**

*Berry v. Refresco Beverages US Inc.*  
Case No. 8:23-cv-02763-TPB-SPF  
United States District Court, Middle District of Florida  
(Tampa Division)

**BAS  
CLAIM**

Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Expense or Money Spent and Supporting Documents (Identify what you are attaching and why it is related to the Incident. You cannot submit self-prepared documentation.)
<input type="checkbox"/> Miscellaneous expenses such as notary, data charges (if charged based on the amount of data used), fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges			

### III. COMPENSATION FOR ATTESTED TIME SPENT

**Do you attest that you spent time remedying issues related to the Incident? If so, how many hours did you spend responding to the Incident?**

- ☐ Yes, I attest under the penalty of perjury that I spent time remedying issues relating to the Incident  
☐ No

**If Yes, how many hours did you spend responding to the Incident? You are eligible for reimbursement for up to five hours at \$20 per hour without supporting documentation.**

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

### IV. REIMBURSEMENT FOR A DOCUMENTED EXTRAORDINARY LOSS

**Complete the chart below if you are claiming reimbursement for a Documented Extraordinary Loss. You are eligible for up to \$5,000 in reimbursement for a Documented Extraordinary Loss.**

Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Expense or Money Spent and Supporting Documents (Identify what you are attaching and why it is related to the Incident)
<input type="checkbox"/> Unreimbursed losses relating to fraud or identity theft			
<input type="checkbox"/> Professional fees including attorneys' and accountants' fees, and fees for credit repair services			
<input type="checkbox"/> Costs associated with freezing or unfreezing credit with any credit reporting agency			

<input type="checkbox"/> Credit monitoring costs that were incurred on or after March 2023, that you attest were caused or otherwise incurred as a result of the Incident			
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--	--	--

Loss Type (Check all that apply)	Date of Loss	Amount of Loss	Description of Expense or Money Spent and Supporting Documents (Identify what you are attaching and why it is related to the Incident)
<input type="checkbox"/> Miscellaneous expenses such as notary, data charges (if charged based on the amount of data used), fax, postage, copying, mileage, cell phone charges (only if charged by the minute), and long-distance telephone charges			

## V. CERTIFICATION AND SIGNATURE

By submitting this Claim Form, I certify that I am a Settlement Class Member and am eligible to make a claim in this settlement and that the information provided in this Claim Form and any attachments is true and correct. 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 any cash compensation or benefits I am claiming are based on losses or expenses I reasonably believe, to the best of my knowledge, were incurred as a result of the Incident

I understand that this claim may be subject to audit, verification, and Court review and that the Settlement Administrator may require supplementation of this Claim or additional information from me. I also understand that all claim payments are subject to the availability of settlement funds and may be reduced, depending on the type of claim and the determinations of the Settlement Administrator.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Mail your completed Claim Form to:**  
 Refresco Data Breach Settlement c/o  
 Claims Administrator  
 Attn: Claim Forms  
 [Claims Administrator's Address]

# Exhibit B

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

**If you received notice in or around November 2023 of a Data Breach involving Refresco Beverages US Inc. that occurred in March 2023, you may be entitled to benefits from a class action settlement.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

- A \$650,000.00 settlement has been reached in a class action lawsuit against Refresco Beverages U.S. Inc. (“Refresco” or “Defendant”) regarding an incident involving unauthorized access to Refresco’s computer network (the “Incident”) that potentially resulted in unauthorized access to names, dates of birth, Social Security numbers, street addresses, financial account numbers, driver’s license numbers, health insurance policy numbers, and certain health information as provided in connection with workers’ compensation and/or ADA accommodations proceedings (“Private Information”) of Settlement Class Members.
- You are a “Settlement Class Member” if you are a person Refresco identified as being among those individuals impacted by the Data Breach, and if you were mailed a notice letter notifying you that your Private Information was potentially compromised in the Incident that occurred in or about March 2023.
- Settlement Class Members may be able to recover the following Settlement benefits:

**Claimed Benefits:** All Settlement Class Members can submit a Claim Form for one or more of the following:

- 1. Out-of-Pocket Expenses:** Reimbursement of up to \$500 in reimbursement for Out-of-Pocket Expenses related to the Incident;
- 2. Compensation for Attested Time Spent: Compensation** for time spent remedying issues related to the Incident for up to five (5) hours of lost time at a rate of \$20 per hour;
- 3. Documented Extraordinary Loss Payment:** Reimbursement of up to \$5,000 in the form of a Documented Extraordinary Loss Payment related to the Incident.

**This Notice may affect your rights. Please read it carefully.**

<b>Summary of Your Legal Rights and Options</b>		<b>Deadline</b>
<b>Submit a Claim Form</b>	To get Settlement benefits for Documented Extraordinary Losses, Out-of-Pocket Expenses, or Attested Time Spent, you must submit a Claim Form. You can submit a Claim Form via U.S. Mail to [Claim Administrator's Address] or online at RefrescoDataBreach.com.	<b>-DATE-</b>
<b>Exclude Yourself</b>	Get no Settlement benefits. Keep your right to file your own lawsuit against the Defendant about the legal claims in this case.	<b>-DATE-</b>
<b>Object</b>	Tell the Court why you do not like the Settlement. You will still be bound by the Settlement if the Court approves it.	<b>-DATE-</b>
<b>Do Nothing</b>	Get no Settlement benefits. Be bound by the Settlement.	

- These rights and options—**and the deadlines to exercise them**—are explained in this Notice.
- The Court in charge of this case must still decide whether to approve the Settlement and the requested attorneys' fees and costs. No Settlement benefits or payments will be provided unless the Court approves the Settlement, and it becomes final.

## **WHAT THIS NOTICE CONTAINS**

### **BASIC INFORMATION .....PAGE 4**

1. Why is this Notice being provided?
2. What is this lawsuit about?
3. Why is the lawsuit a class action?
4. Why is there a Settlement?

### **WHO IS INCLUDED IN THE SETTLEMENT? .....PAGES 4-5**

5. How do I know if I am part of the Settlement?
6. Are there exceptions to being included in the Settlement?
7. What if I am still not sure whether I am part of the Settlement?

### **THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY .....PAGES 5-7**

8. What does the Settlement provide?
9. What may cause Settlement benefits to increase or decrease?
10. How do I submit a claim for reimbursement of Out-of-Pocket Expenses, Documented Extraordinary Losses, and Attested Time Spent?
11. What am I giving up to receive Settlement benefits or stay in the Settlement Class?
12. What are the Released Claims?

### **HOW TO GET BENEFITS FROM THE SETTLEMENT .....PAGES 7**

13. How do I make a claim for Settlement benefits?
14. What happens if my contact information changes after I submit a claim?
15. When will I receive my Settlement benefits?

### **THE LAWYERS REPRESENTING YOU .....PAGE 7**

16. Do I have a lawyer in this case?
17. How will Class Counsel be paid?

### **OPTING OUT OF THE SETTLEMENT .....PAGE 8**

18. How do I get out of the Settlement?
19. If I opt out, can I get anything from the Settlement?
20. If I do not opt out, can I sue the Defendant for the same thing later?

### **OBJECTING TO THE SETTLEMENT .....PAGES 8-10**

21. How do I tell the Court that I do not like the Settlement?
22. What is the difference between objecting and asking to opt out?

### **THE FINAL FAIRNESS HEARING .....PAGE 10**

23. When and where will the Court decide whether to approve the Settlement?
24. Do I have to attend the Final Fairness Hearing?
25. May I speak at the Final Fairness Hearing?

### **IF YOU DO NOTHING ..... PAGE 10**

26. What happens if I do nothing at all?

### **GETTING MORE INFORMATION..... PAGE 10**

27. How do I get more information?

**BASIC INFORMATION****1. Why is this Notice being provided?**

A federal court authorized this Notice because you have the right to know about the proposed Settlement of this class action lawsuit and about all of your rights and options before the Court decides whether to grant final approval to the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get them.

The Honorable Thomas P. Barber of the United States District Court for the Middle District of Florida, Tampa Division, is overseeing this class action. The case is known as *Berry v. Refresco Beverages US Inc.*, Case No. 8:23-cv-02763-TPB-SPF (the “Litigation”). The person who filed this lawsuit is called the “Plaintiff” or “Representative Plaintiff” and the company sued, Refresco Beverages US Inc., is called “Refresco” or the “Defendant.”

**2. What is this lawsuit about?**

The Plaintiff alleges that in or around March 2023, an unauthorized criminal gained unauthorized access to Refresco’s computer network (the “Incident”), which potentially resulted in unauthorized access to the names, dates of birth, Social Security numbers, street addresses, financial account numbers, driver’s license numbers, health insurance policy numbers, and certain health information as provided in connection with workers’ compensation and/or ADA accommodations proceedings of Settlement Class Members.

The Defendant denies any wrongdoing, and no court or other entity has made any judgment or other determination of any wrongdoing, or that any law has been violated. The Defendant denies these, and all other claims made in the Litigation. By entering into the Settlement, the Defendant is not admitting any wrongdoing.

**3. Why is the lawsuit a class action?**

In a class action, the Representative Plaintiff sues on behalf of all people who have similar claims. Together, once a proposed settlement has been agreed to, all these people are called a Settlement Class or Settlement Class Members. One court resolves the issues for all Settlement Class Members, except for those Settlement Class Members who timely exclude themselves (opt out) from the Settlement Class.

The Representative Plaintiff in this case is John Berry.

**4. Why is there a settlement?**

Plaintiff and Defendant do not agree about the claims made in this Litigation. The Litigation has not gone to trial, and the Court has not decided in favor of the Plaintiff or the Defendant. Instead, Plaintiff and Defendant have agreed to settle the Litigation. Plaintiff and the attorneys for the Settlement Class (“Class Counsel”) believe the Settlement is best for all Settlement Class Members because of the Settlement benefits and the risks and uncertainty associated with continued litigation and the nature of the defenses raised by the Defendant.

**WHO IS INCLUDED IN THE SETTLEMENT?****5. How do I know if I am part of the settlement?**

You are a Settlement Class Member if you received a notice letter in November 2023 notifying you that your Private Information was potentially compromised in the Incident that occurred in or around March 2023.

Questions? Visit [www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com) or call toll-free 1-XXX-XXX-

XXXX

## 6. Are there exceptions to being included in the settlement?

Yes. Excluded from the Settlement Class are (1) Defendant and its respective officers and directors; (2) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (3) the Judge assigned to evaluate the fairness of the settlement; and (4) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, abiding or abetting the criminal activity causing the occurrence of the Incident or who pleads *nolo contendere* (a legal term that means “I do not wish to contend”) to any such charge.

## 7. What if I am not sure whether I am part of the settlement?

If you are still not sure whether you are a Settlement Class Member, you may go to the Settlement website at [[www.RefreshcoDataBreach.com](http://www.RefreshcoDataBreach.com)] or call the Claims Administrator’s toll-free number at 1-XXX-XXX-XXXX.

# THE SETTLEMENT BENEFITS – WHAT YOU GET IF YOU QUALIFY

## 8. What does the settlement provide?

If you are a Settlement Class Member, you may be able to recover the following Claimed Benefits as part of the Settlement:

### CLAIMED BENEFITS:

All Settlement Class Members must submit a valid and timely Claim Form to receive any or all of the following Claimed Benefits:

#### 1. Out-of-Pocket Expenses

Settlement Class Members who submit a valid and timely Claim Form are eligible to receive reimbursement of up to \$500 per Settlement Class Member for their Out-of-Pocket Expenses that are reasonably traceable to the Incident. These Documented Ordinary Losses include: (i) unreimbursed bank fees (such as card replacement and over-limit fees); (ii) interest on short-term loans; (iii) long distance phone charges, including cell phone charges (only if charged by the minute); (iv) postage charges; (v) gasoline for local travel; or (vi) unreimbursed expenses incurred for credit reports, credit freezes, credit monitoring, or other identity theft insurance product purchases after the Incident. You must submit documentation of the Out-of-Pocket Expenses as part of Claim. This may include receipts or other documentation and may not be “self-prepared.” “Self-prepared” documents such as handwritten receipts are, by themselves, insufficient to receive reimbursement, but may be considered to add clarity or support to other submitted documentation.

#### 2. Compensation Attested Time Spent

Settlement Class Members who spent time remediating issues related to the Incident can receive reimbursement for up to five (5) hours of lost time at a rate of \$20 per hour with an attestation that they spent the claimed time responding to issues raised by the Incident, including but not limited to: (i) changing passwords on potentially impacted accounts; (ii) monitoring for or investigating suspicious activity on potentially impacted medical, financial, or other accounts; (iii) contacting a medical provider or financial institution to discuss suspicious activity; (iv) signing up for identity theft or fraud monitoring; or (v) researching information about the Incident, its impact, or how to protect themselves from harm due to the Incident. No additional documentation shall be required for members of the Settlement Class to receive compensation for Attested Time Spent.



Settlement Class Members are eligible for compensation for Extraordinary Losses (that are beyond the Out-of-Pocket Expenses claimed above) resulting from the Incident, up to a maximum of \$5,000.00, upon submission of a valid Claim Form and supporting documentation, provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Incident; (iii) the loss occurred between March 2023 and the Claims Deadline; (iv) the loss is not already covered by one or more of the normal reimbursement categories; (v) the claimant made reasonable efforts to avoid the loss or seek reimbursement for the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance. Extraordinary Losses may include, without limitation, the unreimbursed costs, expenses, losses, or charges incurred as a result of identity theft or identity fraud, falsified tax returns, or other possible misuse of Private Information. To receive reimbursement for any Documented Extraordinary Loss, Settlement Class Members must submit supporting documentation of the loss and a description of how the loss is fairly traceable to the Incident.

#### **9. What may cause settlement benefits to increase or decrease?**

In the event that more than 10% of the Settlement is unclaimed after all claimed Documented Extraordinary Loss Payments, Out-of-Pocket Expenses, and Attested Time Spent are allocated to Class Members who have submitted valid claims, the remaining Post DL/OOP Net Settlement Fund shall be reallocated on a pro-rata basis to all Class Members who have submitted valid claims for Attested Time Spent such that no more than 10% of the Post DL/OOP Net Settlement Fund shall remain for cy pres distribution. In the event that the aggregate amount of all Out-of-Pocket Expenses, Documented Extraordinary Loss Payments, and Attested Time Spent Payments exceeds the total amount of the Net Settlement Fund, then the value of the Out-of-Pocket Expenses, Documented Extraordinary Loss Payments, and Attested Time Spent Payments to be paid to each Class Member shall be reduced, on a pro-rata basis, such that the aggregate value of all Documented Loss Payments does not exceed the Net Settlement Fund.

#### **10. How do I submit a claim for reimbursement of Out-of-Pocket Expenses, Documented Extraordinary Losses, and Attested Time Spent? Monitoring, or Alternative Cash Payment?**

Settlement Class Members seeking reimbursement for Out-of-Pocket Expenses, Documented Extraordinary Losses, or Attested Time Spent must complete and submit a Claim Form to the Claims Administrator. Claim Forms can be submitted online at [[www.RefreshcoDataBreach.com](http://www.RefreshcoDataBreach.com)] or by mail to [Claims Administrator's Address]. If by mail, the Claim Form must be postmarked by -DATE-.

#### **11. What am I giving up to receive Settlement benefits or stay in the Settlement Class?**

Unless you exclude yourself (opt out), you are choosing to remain in the Settlement Class. If the Settlement is approved and becomes final, all Court orders will apply to you and legally bind you. You will not be able to sue, continue to sue, or be part of any other lawsuit against the Defendant and Released Parties about the legal issues in this Litigation that are released by this Settlement. The specific rights you are giving up are called "Released Claims."

## 12. What are the Released Claims?

The Settlement Agreement in Sections 8, 1.25 and 1.26 describes the Release, Released Claims, and Released Parties in necessary legal terminology, so please read this section carefully. The Settlement Agreement is available at [www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com) or in the public Court records on file in this lawsuit. For questions regarding the Releases or Released Claims and what the language in the Settlement Agreement means, you can also contact one of the lawyers listed in **Question 16** of this Notice for free, or you can talk to your own lawyer at your own expense.

## HOW TO GET BENEFITS FROM THE SETTLEMENT

### 13. How do I make a claim for Settlement Benefits?

To submit a claim for reimbursement for Out-of-Pocket Expenses, a Documented Extraordinary Loss Payment, or Attested Time Spent, you must timely submit a valid Claim Form. Settlement Class Members seeking benefits under the Settlement must complete and submit a Claim Form to the Claims Administrator, postmarked or submitted online on or before **-DATE-**. Claim Forms may be submitted online [[www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com)] or printed from the Settlement website and mailed to the Claims Administrator at the address on the form. The quickest way to submit a claim is online. Claim Forms are also available by calling 1-**XXX-XXX-XXXX** or by writing to:

Refresco Data Breach Settlement  
c/o Claims Administrator  
Attn: Claim Forms  
[Claim Administrator's Address]  
[[info@RefrescoDataBreach.com](mailto:info@RefrescoDataBreach.com)]

### 14. What happens if my contact information changes after I submit a claim?

If you change your mailing address after you submit a Claim Form, it is your responsibility to inform the Claims Administrator of your updated information. You may notify the Claims Administrator of any changes by calling 1-**XXX-XXX-XXXX** or by writing to:

Refresco Data Breach Settlement  
c/o Claims Administrator  
Attn: Claim Updates  
[Claim Administrator's Address]  
[[info@RefrescoDataBreach.com](mailto:info@RefrescoDataBreach.com)]

### 15. When will I receive my Settlement benefits?

If you file a timely and valid Claim Form, payment will be provided by the Claims Administrator after the Settlement is approved by the Court and becomes final.

It may take time for the Settlement to be approved and become final. Please be patient and check [[www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com)] for updates.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case?

Yes, the Court has appointed attorneys Nicholas A. Migliaccio, Jason S. Rathod, and Saran Q. Edwards of Migliaccio & Rathod LLP, and Scott D. Hirsch of the Scott Hirsch Law Group PLLC as Class Counsel to represent you and the Settlement Class for the purposes of this Settlement. You may hire your own lawyer at your own cost and expense if you want someone other than Class Counsel to represent you in this litigation.

Class Counsel will file a motion asking the Court to award attorneys' fees and costs not to exceed One-third of the \$650,000.00 Settlement Fund, or approximately \$216,666.67. If awarded by the Court, attorneys' fees and costs will be paid out of the Settlement Fund. The Court may award less than this amount. Class Counsel's application for attorneys' fees and costs will be made available on the Settlement website at [www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com) before the deadline for you to comment, or object to the Settlement.

## OPTING OUT OF THE SETTLEMENT

If you are a Settlement Class Member and want to keep any right you may have to sue or continue to sue the Defendant on your own based on the claims raised in this Litigation or released by the Released Claims, then you must take steps to get out of the Settlement. This is called excluding yourself from or "opting out" of the Settlement.

### 18. How do I get out of the Settlement?

To opt out of the Settlement, you must mail or submit via the Settlement website ([www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com)) a written notice of your intent to opt out. The written notice must be signed, include your name and address, and clearly state that you wish to be excluded from the Settlement Class.

If you opt-out via mail, the request must be **postmarked** and sent to the Claims Administrator at the following address by **-DATE-**:

Refresco Data Breach Settlement  
Attn: Opt Outs  
[Claims Administrator address]

You cannot exclude yourself by telephone or by email.

### 19. If I opt out, can I get anything from the Settlement?

No. If you opt out, you give up any right to make a claim for any of the benefits made available as part of the Settlement Agreement. You will retain your right to sue the Defendant for the claims asserted in the Litigation or related to the Incident.

### 20. If I do not opt out, can I sue the Defendant for the same thing later?

No. Unless you opt out, you give up any right to sue the Defendant and Released Parties for the claims this Settlement resolves and Releases relating to the Incident and claims in the litigation. You must opt out of this Litigation to start or continue with your own lawsuit or be part of any other lawsuit against the Defendant or any of the Released Parties. If you have a pending lawsuit, speak to your lawyer in that case immediately.

## OBJECTING TO THE SETTLEMENT

### 21. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, you can tell the Court you do not agree with all or any part of the Settlement or requested attorneys' fees and costs. You can also give reasons why you think the Court should not approve the Settlement or attorneys' fees and costs. To object, you must file timely written notice as provided below no later than **-DATE-**, stating you object to the Settlement. The objection must include all the following additional information:

- (1) The objector's full name, address, telephone number, and email address (if any);
- (2) The case name and docket number, *Berry v. Refresco Beverages US Inc.*, Case No. 8:23-cv-02763-TPB-SPF;
- (3) Information identifying the Settlement Class Member, including proof that he or she is a member of the Settlement Class (e.g., copy of your settlement notice, copy of original notice of the Incident, or a statement explaining why you believe you are a Settlement Class Member);
- (4) A clear and detailed written statement that identifies the basis of the specific objection that the Settlement Class Member asserts
- (5) The identity of any and all counsel representing the objector;
- (6) A statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel;
- (7) A list of proceedings in which You have submitted an objection to a class action settlement during the past five years; and
- (8) The objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any).

To be timely, written notice of an objection in the appropriate form containing the case name and docket number (*Berry v. Refresco Beverages US Inc.*, Case No. 8:23-cv-02763-TPB-SPF) must be filed with the Claims Administrator by **-DATE-**, and sent to:

Refresco Data Breach  
Settlement  
c/o Claims Administrator  
[Claims Administrator's Address]  
or [Email Address]

Any Settlement Class Member who fails to comply with the requirements for objecting in Section 6 of the Settlement Agreement waives and forfeits any and all rights they may have to appear separately and/or to object to the Settlement Agreement and will be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation.

The objector or his or her counsel may also file Objections with the Court through the Court's Electronic-Claims-Filing system, with service on Proposed Settlement Class Counsel and Defendant's Counsel made through the Electronic-Claims-Filing system.

## 22. What is the difference between objecting and asking to opt out?

Objecting is simply telling the Court you do not like something about the Settlement or requested attorneys' fees and costs. You can object only if you stay in the Settlement Class (meaning you do not opt out of the Settlement). Opting out of the Settlement is telling the Court you do not want to be part of the Settlement Class or the Settlement. If you opt out, you cannot object to the Settlement.

## THE FINAL FAIRNESS HEARING

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

The Court will hold a Final Fairness Hearing on **-DATE-**, at **-TIME-** before Judge Sean P. Flynn at the United States District Court for the District of Middle Florida, Tampa Division, Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Courtroom 11B, Tampa, Florida 33602.

Questions? Visit [www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com) or call toll-free 1-**XXX-XXX-**

**XXXX**

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and decide whether to approve the Settlement, and Class Counsels' application for attorneys' fees, costs and expenses. If there are objections, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing.

Note: The date and time of the Final Fairness Hearing are subject to change. The Court may also decide to hold the hearing via Zoom or by phone. Any change will be posted at [\[www.RefrescoDataBreach.com\]](http://www.RefrescoDataBreach.com).

#### **24. Do I have to attend the Final Fairness Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to speak about it. As long as you file or mail your written objection on time, the Court will consider it.

#### **25. May I speak at the Final Fairness Hearing?**

Yes, as long as you do not exclude yourself (opt out), you can (but do not have to) participate and speak for yourself in this Litigation and Settlement. This is called making an appearance. You also can have your own lawyer speak for you, but you will have to pay for the lawyer yourself.

If you want to appear, or if you want your own lawyer (at your own expense) instead of Class Counsel to speak for you at the hearing, you must follow all of the procedures for objecting to the Settlement listed in Question 21 above—and specifically include a statement whether you and your counsel will appear at the Final Fairness Hearing.

### **IF YOU DO NOTHING**

#### **26. What happens if I do nothing at all?**

If you are a Settlement Class Member and you do nothing, you will not receive any Settlement benefits. You will give up the rights explained in the "Opting Out from the Settlement" section of this Notice, including your right to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendant, the Related Entities, or any of the Released Persons about the legal issues in this Litigation that are released by the Settlement Agreement relating to the Incident.

### **GETTING MORE INFORMATION**

#### **27. How do I get more information?**

This notice summarizes the proposed Settlement. Complete details are provided in the Settlement Agreement. The Settlement Agreement and other related documents are available at [\[www.RefrescoDataBreach.com\]](http://www.RefrescoDataBreach.com), by calling 1-XXX-XXX-XXXX, or by writing to:

Refresco Data Breach Settlement  
c/o Claims Administrator

[\[Claim Administrator's Address\]](#)  
[\[info@RefrescoDataBreach.com\]](mailto:info@RefrescoDataBreach.com)

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE  
REGARDING THIS NOTICE**

# Exhibit C

LEGAL NOTICE

If you received notice in or around November 2023 of a Data Breach involving Refresco Beverages US Inc. that occurred in March 2023, you may be entitled to benefits from a class action settlement.

*A federal court has authorized this Notice.*

**For more information, visit**  
[[www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com)]  
**or call toll-free 1-XXX-XXX-XXXX.**

Refresco Data Breach  
Settlement c/o Claims  
Administrator

**«Barcode»**

Postal Service: Please do not mark barcode

Notice ID: «Notice ID»

Confirmation Code: «Confirmation Code»

«First1» «Last1»  
«Addr1» «Addr2»  
«City», «St» «Zip»  
«Country»

First-Class  
Mail  
US Postage  
Paid  
Permit #\_\_

A \$50,000 settlement has been reached in a class action lawsuit against Refresco involving unauthorized access to its network systems that potentially resulted in unauthorized access to (but not limited to) full names, Social Security numbers, addresses, and dates of birth (the "Private Information") of Settlement Class Members (the "Data Breach"). Refresco denies all liability.

**Who is included?** Refresco's records indicate that you are included in the Settlement. The Settlement includes all persons Refresco identified as being among those individuals impacted by the Data Breach, including all who were sent a notice of the Data Breach.

**What does the Settlement provide?** The Settlement provides Class Members with the right to claim compensation for Out-of-Pocket Expenses (up to \$500), Documented Extraordinary Losses (up to \$5,000), and Attested Time Spent (up to \$100).

**How do I get benefits?** You must complete and submit a Claim Form by **Month \_\_**, 2025. Claim Forms are available and may be filed online at [[www.refrescodatabreach.com](http://www.refrescodatabreach.com)]. If you would like to file a claim for the attested time benefit only, you may complete the form online at the above-referenced website, or you may return the attached Claim Form via U.S. Mail to [Claims Administrator's Address].

**What are my other options?** If you do not want to be legally bound by the Settlement, you must exclude yourself by **Month \_\_**, 2025. Unless you exclude yourself from the Settlement, you will not be able to sue Refresco or its related parties for any claim released by the Settlement Agreement. If you do not exclude yourself from the Settlement, you may object and notify the Court that you or your lawyer intend to appear at the Court's fairness hearing. Objections are due **Month \_\_**, 2025.

**The Court's Fairness Hearing.** The Court will hold a final fairness hearing in this case (*Berry v. Refresco Beverages US Inc.*, Case No. 8:23-cv-0276-TPB-SPF on **Month \_\_**, 2025 at \_\_: \_\_m. at the United States District Court for the Middle District of Florida (Tampa Division) located at 801 North Florida Avenue, Tampa, Florida 33602. At the hearing, the Court will decide whether to approve: (1) the Settlement; and (2) Class Counsel's request for up to \$216,666.67 in attorneys' fees and reimbursement of expenses. You may appear at the hearing, but you do not have to. You may also hire your own attorney, at your own expense, to appear or speak for you at the hearing.



NOTICE ID: «NOTICE ID»	REFRESCO DATA BREACH SETTLEMENT CLAIM FORM	«Barcode»
«FIRST NAME» «LAST NAME»		
«ADDRESS»		

First-Class  
Mail  
US Postage  
Pre-Paid  
Permit #\_\_

Refresco Data Breach Settlement  
c/o Claims Administrator  
[Claims Administrator's Address]

# Exhibit D

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

JOHN BERRY, individually and on  
behalf of all others similarly situated,  
Plaintiff,

v.

REFRESCO BEVERAGES US, INC.  
Defendant.

Case No. 8:23-cv-02763-TPB-SPF

**[PROPOSED] ORDER GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

The Court having considered Plaintiff’s Motion for Preliminary Approval and related papers, and finding no just reason for delay in entry of this Order Granting Preliminary Approval of Class Action Settlement (the “Order” or “Preliminary Approval Order”),

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

**PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

1. The Settlement Agreement, which is attached to Plaintiff’s Unopposed Motion for Preliminary Approval (“Motion for Preliminary Approval”) as Exhibit 1, is incorporated fully herein by reference. The definitions used in the Settlement Agreement are adopted in this Order and shall have the same meaning ascribed in the Settlement Agreement.

2. The Court has jurisdiction over (a) the claims at issue in this lawsuit, (b) Plaintiff John Berry, individually and on behalf of all others similarly situated (“Plaintiff”), and (c) Defendant Refresco Beverages US Inc. (“Refresco” or “Defendant” and together with Plaintiff, the “Parties”).

3. This Order is based on Federal Rule of Civil Procedure 23 (“Rule 23”).

4. The Court finds that the Parties’ Settlement as set forth in Exhibit 1 to Plaintiff’s Motion for Preliminary Approval is fair, reasonable, and adequate, and falls within the range of possible approval, and was entered into after extensive, arm’s-length negotiations, such that it is hereby preliminarily approved and notice of the Settlement should be provided to the Settlement Class Members pursuant to Rule 23(e).

### **PROCEDURAL HISTORY**

5. This case involves a putative class action against Refresco relating to a criminal data security incident it suffered (the “Incident”) that potentially allowed an unauthorized actor to access the Personal Information of approximately 23,491 individuals in or around March 2023. Refresco announced the Incident in a notice sent to affected individuals in November 2023.

6. On December 5, 2023, Plaintiff Berry filed a Complaint alleging, among other things, that Refresco failed to take adequate measures to protect her and other putative Class Members’ Personal Information and failed to disclose that its

systems were susceptible to such a criminal attack. Plaintiff filed his amended Complaint on February 14, 2024.

7. The Complaint alleges the following causes of action (1) negligence; (2) breach of contract; (3) breach of implied contract; (4) breach of fiduciary duty; (5) violation of the California Constitution's right to privacy; and (6) violation of Florida's Deceptive and Unfair Practices Act ("FDUTPA"), Fla. Stat. § 501.201, *et seq.*

**SETTLEMENT BENEFITS AND AGGREGATE CAP**

8. The Settlement negotiated on behalf of the Class provides for monetary relief to be paid by Refresco to eligible claimants of a Settlement Class that includes 23,491 persons whose Personal Information was compromised as a result of the Incident and who were sent written notice thereof. Settlement Class Members may be eligible to receive the following Settlement Benefits:

- a. Payments: All Settlement Class Members who submit a valid, complete, and timely Claim using the Claim Form, which is attached as Exhibit A to the Settlement Agreement, are eligible to be paid the following:
  - i. Reimbursements for Attested Time Spent up to \$100 for each Settlement Class Member. Lost Time will be reimbursed at a rate of \$20 per hour, and a maximum of five (5) hours can be claimed, with an attestation that they spent that much time responding to issues raised by the Incident.

ii. Out-of-Pocket Expenses up to \$500 for each Settlement Class

Member as reimbursement for actual, documented, unreimbursed out-of-pocket expenses.

iii. Documented Extraordinary Losses up to \$5,000 for each

Settlement Class Member as compensation for extraordinary losses resulting from the Incident.

9. The payments available to Settlement Class Members under subsection 8(a), together with Settlement administration charges, and Plaintiff's attorneys' fees and expenses, shall derive from the \$650,00.00 non-reversionary Net Settlement Fund. To the extent any monies from uncashed checks remain in the Net Settlement Fund more than one hundred-twenty (120) days after the distribution of all Settlement Payments to the Class Members, a subsequent Settlement Payment will be evenly made to all Class Members with approved claims for Attested Time Spent payments who cashed or deposited the initial payment they received, provided that the average check amount is equal to or greater than Three Dollars and No Cents (\$3.00) and more than 10% of the Net Settlement Fund remains unclaimed. The distribution of this remaining uncashed Net Settlement Fund shall continue until the average check or digital payment in a distribution is less than three dollars (\$3.00) and/or no more than 10% of the Net Settlement Fund remains, whereupon the amount remaining in the Net Settlement Fund shall be distributed by mutual agreement of the Parties to the Refresco UA 401(k) Savings & Retirement Plan.

**CLASS CERTIFICATION**

10. For purposes of settlement only, and pursuant to Federal Rule of Civil Procedure 23(c)(1)(b), the Court provisionally certifies the class, defined as follows:

All persons Refresco identified as being among those individuals impacted by the March 2023 Data Breach, including all who were sent a notice of the Data Breach (the “Settlement Class Members”).

The Settlement Class specifically excludes: (1) any judge presiding over this matter and any of their first-degree relatives and judicial staff; (2) Refresco’s officers, directors, and members; and (3) persons who timely and validly request exclusion from the Settlement Class.

11. The Court provisionally finds, pursuant to Rule 23(a) and (b)(3), for settlement purposes only, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the Class Representative’s claims are typical of the claims of the Settlement Class; (d) the Class Representative will fairly and adequately protect the interests of the Settlement Class; (e) the questions of law or fact common to the Settlement Class Members predominate over any questions affecting only individual members; and (f) that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(a)(1)-(4), (b)(3).

**SETTLEMENT CLASS REPRESENTATIVE AND CLASS COUNSEL**

12. Plaintiff John Berry is hereby provisionally designated and appointed as the Class Representative. The Court provisionally finds that the Class Representative is similarly situated to absent Settlement Class Members and is typical of the Settlement Class, and, therefore, will be an adequate Class Representative.

13. The Court finds that Nicholas A. Migliaccio, Jason S. Rathod, and Saran Q. Edwards of Migliaccio & Rathod LLP, and Scott D. Hirsch of the Scott Hirsch Law Group, PLLC are experienced and adequate counsel and are provisionally designated as Settlement Class Counsel.

**NOTICE TO SETTLEMENT CLASS**

14. No later than thirty (30) business days after entry of the Preliminary Approval Order (the “Notice Deadline”), or such other time as may be ordered by the Court, the Settlement Administrator shall disseminate the Short Form Notice to the Settlement Class Members as follows:

- a. The Settlement Administrator will send the Short Form Notice via U.S. mail, postage prepaid;
- b. For any Settlement Class Member for whom notice is returned as undeliverable, the Settlement Administrator shall re-mail the Short Form Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail;



- c. For any Short Form Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Short Form Notice to the extent an updated address is identified;
- d. The Settlement Administrator need only make one attempt to re-mail any Short Form Notices that are returned as undeliverable; and
- e. Neither the Parties nor the Settlement Administrator shall have any other obligation to re-mail individual notices that have been mailed.
- f. In the event the Claims Rate is less than 3% of the Settlement Class forty-five (45) days prior to the Claims Deadline, the Settlement Administrator shall send a Reminder Notice to the Class Members who have not yet filed a claim. The Settlement Administrator will send the Reminder Notice thirty (30) days prior to the Claims Deadline.

15. Also, by the Notice Deadline, the Settlement Administrator shall cause the Settlement Website to be launched on the Internet. The Settlement Administrator shall create the Settlement Website at [www.RefrescoDataBreach.com](http://www.RefrescoDataBreach.com) (or a substantially similar Website to be approved by the Parties). The Settlement Website shall contain information regarding how to submit Claim Forms (including submitting Claims Forms electronically through the Settlement Website) and relevant documents,

including, but not limited to, the Long Form Notice, the Claim Form, the Settlement Agreement, and other relevant case documents. The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly. The Settlement Website shall further allow for submission of Claim Forms and Requests for Exclusion electronically through the Settlement Website. The Claim Form will be posted in PDF format as well as in a user-friendly format allowing filling out of the forms online.

16. The Claim Form, Short Notice, and Long Form Notice, attached as Exhibits A, B, and C, respectively, to the Settlement Agreement, are constitutionally adequate and are hereby approved. The Notice contains all essential elements required to satisfy federal statutory requirements and due process under Rule 23(c)(2)(b), the United States Constitution, and other applicable laws. The Court further finds that the form, content, and method of providing the Settlement Class Notice, as described in the Settlement Agreement, including the exhibits thereto, (a) 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 Settlement, their rights under the Settlement, including, but not limited to, their rights to object to or exclude themselves from the Settlement; and (c) are reasonable and constitute due, adequate, and sufficient notice to all Settlement Class Members.

17. The Notice Program set forth in the Settlement Agreement and described herein satisfies the requirements of Rule 23(c)(2)(b), provides the best notice practicable under the circumstances, and is hereby approved.

18. The Settlement Administrator is directed to carry out Notice and the Notice Program, as set forth in the Settlement Agreement.

19. Settlement Class Members who seek to be excluded from the Settlement Class must notify the Settlement Administrator in writing, postmarked no later than sixty (60) days after the Notice Deadline (the “Opt-Out Deadline”). Any Settlement Class Member may submit a request for exclusion from the Settlement at any time before the Opt-Out Deadline. To be valid, the request for exclusion must be postmarked or received by the Settlement Administrator on or before the Opt-Out Deadline. Any person who elects to request exclusion from the Settlement Class shall not: (i) be bound by any orders or Judgment entered in the Action, (ii) be entitled to relief under the Settlement Agreement, (iii) gain any rights by virtue of the Settlement Agreement, or (iv) be entitled to object to any aspect of the Settlement Agreement. Requests for Exclusion may only be done on an individual basis, and no person may request to be excluded from the Settlement Class through “mass” or “class” opt-outs.

20. Settlement Class Members may enter an appearance in the Action, at their own expense, individually or through counsel of their own choice. If a Class Member does not enter an appearance, they will be represented by Class Counsel. A Settlement Class Member who wishes to object to the Settlement Benefits and/or the

Attorneys' Fee Award and Costs, or to appear at the Final Approval Hearing and show cause, if any, for why the Settlement should not be approved as fair, reasonable, and adequate to the Class, why a final judgment should not be entered thereon, why the Settlement Benefits should not be approved, or why the Fee Award and Costs should not be granted, may do so, but must proceed as set forth in the Settlement Agreement. No Class Member or other person will be heard on such matters unless they have filed in this Action an objection, together with any briefs, papers, statements, or other materials the Settlement Class Member or other person who wishes the Court to consider, within sixty (60) days of the Notice Deadline.

21. All written objections and supporting papers must clearly set forth the following: (a) the objector's full name, address, email address, and telephone number; (b) the case name and number of the Action; (c) information identifying the objector as a Settlement Class Member, including proof that the objector is part of the Settlement Class; (d) all grounds for the objection, accompanied by any legal support for the objection; (e) the identity of counsel representing the objector, if any; (f) a list, by case name, court, and docket number, of all other cases in which the objector (directly or through counsel) has filed an objection to any proposed class action settlement within the last five (5) years; (g) a statement confirming whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and if through counsel, identifying that counsel; and (h) the objector's

signature and the signature of objector's duly authorized attorney or other duly authorized representative, if any.

22. Any Settlement Class Member who does not make their objections in the manner and by the date set forth herein and in the Settlement Agreement shall be deemed to have waived any objections and shall be forever barred from raising such objections in this or any other action or proceeding, absent further order of the Court.

23. Without limiting the foregoing, any challenge to the Settlement Agreement, this Order Granting Preliminary Approval of the Class Action Settlement Agreement, and the Final Approval Order and Judgment shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

24. Refresco will serve or cause to be served the notice to state and territory attorneys general required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA") no more than ten (10) days after the Motion for Preliminary Approval and the Settlement Agreement are filed with Court.

### **ADMINISTRATION OF SETTLEMENT**

25. The Class Representative, Settlement Class Counsel, and Refresco have created a process for assessing the validity of claims and a payment method to Settlement Class Members who submit timely, valid Claim Forms. The Court hereby preliminarily approves the Settlement Benefits to the Settlement Class and the plan for distributing the Settlement Benefits as described in Section 2 of the Settlement Agreement.

26. The Court appoints Simpluris as Settlement Administrator.

27. The Court directs that the Settlement Administrator distribute Settlement Benefits according to the terms of the Settlement Agreement, should the Settlement be finally approved.

28. Settlement Class Members who qualify for Settlement Benefits and who wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice.

29. If the Final Approval Order and Judgment are entered, all Settlement Class Members who fail to submit a claim in accordance with the requirements and procedures specified in the Notice, and who do not timely exclude themselves from the Settlement Class, 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 Final Approval Order and Judgment.

### **FINAL APPROVAL HEARING**

30. A Final Approval Hearing shall be held on \_\_\_\_\_ 2025 at the location noticed on the Settlement Website. The Court may require or allow the Parties and any objectors to appear at the Final Approval Hearing either in person or by telephone or videoconference.

31. At the Final Approval Hearing, the Court will determine whether: (1) this action should be finally certified as a class action for settlement purposes pursuant

Rule 23(a)(1)-(4), (b)(3) & (c)(1)(b); (2) the Settlement should be finally approved as fair, reasonable, and adequate; (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; and (5) Class Counsel's application for an Attorneys' Fee Award and Costs should be approved.

32. Class Counsel shall file a motion for Final Approval and Judgment of the Settlement at least fourteen (14) days prior to the Objection Deadline.

33. Class Counsel shall file a motion for an award of Attorneys' Fees and Costs at least fourteen (14) days prior to the Objection Deadline. Refresco may file an opposition to Class Counsel's motion for attorneys' fees and costs at least seven (7) days prior to the Objection Deadline.

34. If the Settlement is not finally approved by the Court, the Parties are directed pursuant to the Settlement to negotiate in good faith to attempt to revise the Agreement as needed to obtain Court approval. Failing a mutually agreed upon revision, 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. In such an event, Settlement Class Members, Settlement Class Representative and Class Counsel shall not in any way be responsible or liable for any expenses, including costs of notice and administration associated with the Settlement or the Settlement Agreement, except that each Party shall bear its own attorneys' fees and costs.

35. In the event the Settlement and Settlement Agreement shall become null and void and be of no further force and effect, the Court’s orders, including this Order, shall not be used or referred to for any purpose whatsoever (except as necessary to explain the timing of the procedural history of the Action).

36. This Order shall have no continuing force or effect if a Final Judgment is not entered and shall not be construed or used as an admission, concession, or declaration by Refresco of any fault, wrongdoing, breach, liability, or the certifiability of any class.

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

EVENT	DATE
Defendant’s CAFA Notice Deadline	10 days after Motion for Preliminary Approval and Settlement Agreement are filed with Court
Notice Deadline	No later than 30 days after entry of the Preliminary Approval Order
Deadline for Class Members to Opt-Out of Settlement	60 days after Notice Deadline
Deadline for Class Members to Object to Settlement	60 days after Notice Deadline
Deadline for Class Members to Submit Timely, Valid Claims for Monetary Relief	____ days after Notice Deadline



Deadline for Plaintiff to File Motion for Final Approval and Judgment	No later than 14 days prior to the Objection Deadline
Deadline for Plaintiff to File Motion for Attorneys' Fees and Expenses	No later than 14 days prior to the Objection Deadline
Deadline for Defendant to File Motion Opposing Plaintiff's Motion for Attorneys' Fees and Expenses	No later than 7 days prior to the Objection Deadline
Final Approval Hearing	<b>DATE</b>

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Dated: \_\_\_\_\_, 2025

---

HONORABLE SEAN P FLYNN  
UNITED STATES MAGISTRATE JUDGE

# Exhibit E

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

JOHN BERRY, individually and on  
behalf of all others similarly situated,  
Plaintiff,

v.

REFRESCO BEVERAGES US, INC.  
Defendant.

Case No. 8:23-cv-02763-TPB-SPF

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT**

The Court, having held a Final Approval Hearing on \_\_\_\_\_, 2025 at \_\_\_\_\_.m., in the Courtroom of The Honorable Sean P. Flynn, United States District Court for the Middle District of Florida (Tampa Division), Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Courtroom 11B, Tampa, Florida 33602, and having considered all matters submitted to it at the Final Approval Hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order (the “Order”) and good cause appearing therefore, and having considered the papers filed and proceedings held in connection with the Settlement, having considered all of the other files, records, and proceedings in the Action, and being otherwise fully advised,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

1. This Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all the Parties and each of the Class Members. Venue is proper in this Court.

2. This Order incorporates and makes a part hereof: (a) the Class Action Settlement Agreement, dated May 2, 2025 (“Settlement Agreement”), including the definitions in the Settlement Agreement and (b) the Notices attached as Exhibits thereto, respectively, all of which were filed with the Court on May 2, 2025. All terms used in this Order have the same meanings as set forth in the Settlement Agreement, unless otherwise defined herein.

3. Certification of the Settlement Class for Purposes of Settlement.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court certifies, solely for purposes of effectuating the Settlement, this Action as a class action on behalf of a Settlement Class<sup>1</sup> defined as: “all persons Refresco identified as being among those individuals impacted by the Data Breach, including all who were sent a notice of the Data Breach (“Settlement Class Members”).” Excluded from the Settlement Class are: (1) any judge presiding over this matter and any of their first-degree relatives and judicial staff; (2) Refresco’s officers, directors, and members; and (3) persons who timely and validly request exclusion from the Settlement Class.

---

<sup>1</sup> The capitalized terms used in [Proposed] Order Granting Final Approval of Class Action Settlement shall have the same meaning as defined in the Class Action Settlement Agreement and Release (the “Settlement Agreement”).

4. Class Representative. Plaintiff John Berry (“Class Representative”) is hereby appointed, for settlement purposes only, as representative for the Settlement Class for purposes of Rule 23 of the Federal Rules of Civil Procedure.

5. Class Counsel. Nicholas A. Migliaccio, Jason S. Rathod, and Saran Q. Edwards of Migliaccio & Rathod LLP, and Scott D. Hirsch of the Scott Hirsch Law Group, PLLC are hereby appointed, for settlement purposes only, as counsel for the Settlement Class pursuant to Rules 23(c)(1)(B) and (g) of the Federal Rules of Civil Procedure.

6. Class Notice. The Court finds that the dissemination of Notice to Settlement Class Members: (a) was implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of (i) the pendency of the Action; (ii) their right to submit a claim (where applicable) by submitting a Claim Form; (iii) their right to exclude themselves from the Settlement Class; (iv) the effect of the proposed Settlement (including the releases to be provided thereunder); (v) Class Counsel’s motion for a Fee Award and Costs; (vi) their right to object to any aspect of the Settlement, and/or Class Counsel’s motion for a Fee Award and Costs; and (vii) their right to appear at the Final Approval Hearing; (d) constituted due, adequate, and sufficient notice to all natural persons entitled to receive notice of the proposed Settlement; and (e)

satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States (including the Due Process Clause), and all other applicable laws and rules.

7. Class Action Fairness Act Notice. The Court finds the notice to government officials, as given, complied with 28 U.S.C. § 1715.

8. Objections. Pursuant to Rule 23(e)(5) of the Federal Rules of Civil Procedure, Class Members had the opportunity to file objections. There have been no objections.

9. Final Settlement Approval and Dismissal of Claims. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Settlement Agreement in all respects (including, without limitation: the consideration provided for in the Settlement; the releases provided for therein; and the dismissal with prejudice of the claims asserted against Defendant in the Action), and finds that the Settlement is, in all respects, fair, reasonable and adequate to the Settlement Class. The Court finds that, pursuant to Rule 23(e)(2), (A) the Class Representative and Class Counsel have adequately represented the Settlement Class; (B) the Settlement was negotiated at arm's length; (C) the relief provided for the Settlement Class is fair, reasonable, and adequate taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of the proposed method of distributing relief

to the Settlement Class, including the method of processing Class Member claims; (iii) the terms of the proposed award of attorneys' fees and reimbursement of costs and other expenses, as well as the Service Award to the Class Representative; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the Settlement treats Class Members equitably relative to each other. The Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Settlement Agreement.

10. Dismissal with Prejudice. The Action is hereby dismissed with prejudice as to Refresco Beverages US Inc. ("Refresco" or "Defendant"). The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement.

11. Binding Effect. The terms of the Settlement Agreement and of this Order shall be forever binding on Defendant, Plaintiff, and all Class Members (regardless of whether or not any individual Class Member submits a Claim Form, seeks or obtains a Settlement benefit, or objected to the Settlement), as well as their respective successors and assigns.

12. Opt-Outs. The persons listed on Exhibit 1, attached hereto and incorporated by this reference, submitted timely and proper Requests for Exclusion, are excluded from the Settlement Class, and are not bound by the terms of the Settlement Agreement or this Order.

13. Releases. The releases set forth in Section 8 of the Settlement Agreement are expressly incorporated herein in all respects. The releases are effective as of the Effective Date. Accordingly, this Court orders pursuant to this Order, without further action by anyone, upon the Effective Date of the Settlement, and as provided in the Settlement Agreement, that Plaintiff and each and every member of the Settlement Class (except those individuals whose names appear on Exhibit 1) shall have released the Released Claims against the Released Parties. Notwithstanding the foregoing, nothing in this Order shall bar any action by any of the Parties to enforce or effectuate the terms of the Settlement Agreement or this Order.

14. Future Prosecutions Barred. Plaintiff and all Class Members are hereby barred and permanently enjoined from instituting, asserting, or prosecuting any or all of the Released Claims against any of the Released Parties.

15. No Admission of Liability. The Court hereby decrees that the Settlement, this Order, and the fact of the Settlement do not constitute admissions or concessions by Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever, or an admission of the appropriateness of class certification for trial or dispositive motion practice. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. Nothing relating to the Settlement shall be offered or received in evidence



as an admission, concession, presumption or inference against Defendant or any of the Released Parties in any proceeding, other than such proceedings as may be necessary to consummate or enforce the Settlement Agreement or to support a defense based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense.

16. Attorneys' Fees and Expenses. Class Counsel are awarded attorneys' fees in the amount of \$\_\_\_\_\_ and reimbursement of costs and expenses in the amount of \$\_\_\_\_\_, and such amounts shall be paid by the Settlement Administrator pursuant to and consistent with the terms of the Settlement.

17. Modification of the Agreement of Settlement. Without further approval from the Court, Plaintiff, by and through Class Counsel, and Defendant are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Order; and (b) do not materially limit the rights of members of the Settlement Class in connection with the Settlement. Without further order of the Court, Plaintiff, by and through Class Counsel, and Defendant may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.

18. Retention of Jurisdiction. Without affecting the finality of this Order in any way, the Court hereby retains and reserves jurisdiction over: (a) implementation of this Settlement and any distributions pursuant to the Settlement; (b) the Action, until the Effective Date and until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement Agreement, including the exhibits appended thereto; and (c) all Parties, for the purpose of interpreting, implementing, and enforcing the settlement embodied in the Settlement Agreement.

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Dated: \_\_\_\_\_, 2025

---

HONORABLE SEAN P FLYNN  
UNITED STATES MAGISTRATE JUDGE