

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re UNITE HERE DATA SECURITY
INCIDENT LITIGATION

This Document Relates To:

ALL ACTIONS.

Lead Case No. 1:24-cv-01565-JSR

(Consolidated with Case No. 1:24-cv-
01904)

SETTLEMENT AGREEMENT

This Settlement Agreement, dated as of this 20th day of December, 2024, is made and entered into by and among Plaintiffs Michelle Puller-Soto and Tamiko Conway (“Plaintiffs”), individually and on behalf of the Settlement Class (as defined below), and UNITE HERE (“Defendant,” and together with Plaintiffs, the “Settling Parties”). The Settlement Agreement is subject to Court approval and is intended by the Settling Parties to fully, finally, and forever resolve, discharge, release, and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof.

I. THE LITIGATION

Plaintiffs allege that, on October 20, 2023, UNITE HERE detected unusual activity on its computer network and subsequently determined that an unauthorized actor had gained access to the personal identifying information stored thereon, including the names, Social Security numbers, dates of birth, and medical information of approximately 791,273 individuals (the “Incident”). [Compl., Sections 1, 52, 142]. Plaintiffs allege that UNITE HERE did not begin notifying impacted individuals until February 23, 2024. [*Id.*, Section 3]. Plaintiff Conway alleges that she experienced multiple fraudulent charges to her Chime checking as a result of the Incident. [*Id.*,

Sections 111–12]. Both Plaintiffs allege lost time and opportunity costs, annoyance, interference, and inconvenience as a result of the Incident. [*Id.* at Sections 94-102, 110]. Following notification of the Incident, Plaintiffs each brought separate suits against UNITE HERE relating to the Incident. On April 5, 2024, Plaintiffs’ suits were consolidated into the present action (the “Litigation”) in the Southern District of New York, Case No. 1:24-cv-01565-JSR.

Pursuant to the terms set out below, this Settlement Agreement provides for the resolution of all claims and causes of action asserted, or that could have been asserted, against UNITE HERE and the Released Persons (as defined below) relating to the Incident, by and on behalf of Plaintiffs and Settlement Class Members (as defined below), and any other such actions by and on behalf of any other individuals originating, or that may originate, in jurisdictions in the United States of America (“United States,” as defined below) against UNITE HERE and the Released Persons relating to the Incident.

II. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLING

Plaintiffs believe that the claims asserted in the Litigation, as set forth in the Complaint, have merit, which Defendant denies. Plaintiffs and Class Counsel (as defined below) recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against UNITE HERE through further discovery, motion practice, trial, and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Class Counsel are highly experienced in class-action litigation and very knowledgeable regarding the relevant claims, remedies, and defenses at issue in data-breach litigation in general and in this Litigation in particular. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

III. DENIAL OF WRONGDOING AND LIABILITY

UNITE HERE denies each and every claim and contention alleged against it in the Litigation. UNITE HERE denies any and all wrongdoing or liability that is alleged, or which could be alleged, in the Litigation. Nonetheless, UNITE HERE 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 Settlement Agreement. UNITE HERE has considered the uncertainty and risks inherent in any litigation. UNITE HERE has, therefore, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

IV. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Class, Class Counsel, and UNITE HERE that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice as to the Settling Parties, the Settlement Class, and the Settlement Class Members, except as to those Settlement Class Members who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. Definitions

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

1.1 “Agreement” or “Settlement Agreement” means this Agreement.

1.2 “CAFA Notice” means a notice of the proposed Settlement Agreement in compliance with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et*

seq. (“CAFA”), to be served upon the appropriate state official in each state where a Settlement Class Member resides and the appropriate federal official. Costs for preparation and issuance of the CAFA Notice will be paid from the Settlement Fund.

1.3 “Claims Deadline” means the postmark and/or online submission deadline for Valid Claims (as defined below) pursuant to Section 2.3.4.

1.4 “Claim Form” means the form that the Settlement Class Members must complete and submit on or before the Claims Deadline to be eligible for the benefits described herein. The Claim Form shall require a sworn signature or electronic verification, but shall not require notarization. The Claim Form will be substantially in a form as shown in the template attached hereto as **Exhibit C** and will be available on both the Settlement Website (as defined below) and in paper format if specifically requested by a Settlement Class Member. The Claim Form shall include the ability for Settlement Class Members to select the means by which they shall be paid, and shall include options to be paid by check or by other electronic means usually and customarily offered by the Settlement Administrator (*e.g.*, Venmo, PayPal, CashApp, Prepaid Electronic Credit Card, etc.).

1.5 “Costs of Settlement Administration” means all actual costs associated with or arising from Settlement Administration. The Settlement Administrator shall, from the Settlement Fund, pay all Costs of Settlement Administration subject to approval by Class Counsel.

1.6 “Court” means the United States District Court for the Southern District of New York.

1.7 “Incident” means the October 20, 2023 “Data Breach” alleged in the Complaint, whereby unauthorized user(s) allegedly gained access to UNITE HERE’s network, deployed ransomware, and obtained unauthorized access to Defendant’s files, including the Private Information of approximately 791,273 individuals. UNITE HERE provided notification of the Incident to all potentially impacted individuals beginning on February 23, 2024.

1.8 “Defendant” means UNITE HERE, also referred to as “Defendant” throughout.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in Section 9.1 herein have occurred and been met and the Judgment is Final.

1.10 “Final” means the occurrence of all of the following events: (i) the settlement pursuant to this Settlement Agreement is finally approved by the Court; (ii) the Court has entered a Judgment (as defined below); and (iii) the time to appeal or seek permission to appeal from the Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the 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. Notwithstanding the above, any order modifying or reversing any attorneys’ fee award or service award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

1.11 “Judgment” means a judgment rendered by the Court, substantially in the form as shown in **Exhibit E**.

1.12 “Long Notice” means the long form notice of settlement posted on the Settlement Website, substantially in the form as shown in the template attached as **Exhibit B** hereto.

1.13 “Objection Date” means the date by which Settlement Class Members’ objections must be filed with the Clerk of the Court for such to be timely and effective.

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

1.15 “Person” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, labor organization, 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, predecessors, successors, representatives, or assignees.

1.16 “Private Information” means any kind of legally protected information, including, but not limited to, individual names, Social Security numbers, dates of birth, and medical information, and any other types of personally identifiable information or protected health information collected or maintained by UNITE HERE.

1.17 “Plaintiffs” or “Class Representatives” mean Michelle Puller-Soto and Tamiko Conway.

1.18 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement and ordering that notice be provided to the Settlement Class, substantially in the form as shown in **Exhibit D** hereto.

1.19 “Settlement Class Counsel” and/or “Class Counsel” means Mason A. Barney and Tyler J. Bean of the law firm Siri & Glimstad LLP, and John J. Nelson of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC.

1.20 “Related Parties” means Defendant UNITE HERE’s respective past or present subsidiaries, divisions, and related or affiliated entities, including without limitation local unions, joint boards and Taft-Hartley Funds, and each of their respective predecessors, successors, trustees, directors, officers, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was or could have been named as a defendant in this Litigation.

1.21 “Released Claims” shall collectively mean any and all past, present, and future claims and causes of action of any kind or description, whether known or unknown, including, but not limited to, any causes of action arising under or premised upon any statute, constitution, law, ordinance, treaty, regulation, or common law of any country, state, province, county, city, or municipality, including 15 U.S.C. § 45 *et seq.*, and all similar statutes in effect; violations of any New York and similar state consumer protection statutes, including, but not limited to, the New York General Business Law; California Consumer Privacy Act and California Unfair Competition Law; negligence; negligence *per se*; breach of contract; breach of implied contract; breach of fiduciary duty; breach of confidence; invasion of privacy; fraud; misrepresentation (whether fraudulent, negligent or innocent); unjust enrichment; bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute or common law duty; and any Unknown Claims; and 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, and/or the appointment of a receiver, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent, direct or derivative, and any other form of legal or equitable relief that either has been asserted, was asserted, or could have been asserted, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning, or arising out of the Incident. Released Claims shall not include the right of any Settlement Class Member, Class Counsel, or any of the Released Persons to enforce the terms of the settlement contained in this Settlement Agreement and shall not include the claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

1.22 “Released Persons” means Defendant and the Related Parties.

1.23 “Settlement Administration” means the processing and payment of claims received from Settlement Class Members by the Settlement Administrator (as defined below).

1.24 “Settlement Administrator” means Kroll Settlement Administration LLC, a company experienced in administering class action claims generally and, specifically, those of the type provided for and made in data breach litigation.

1.25 “Settlement Claim” means a claim for settlement benefits made under the terms of this Settlement Agreement.

1.26 “Settlement Class” means “All persons residing in the United States whose Private Information was actually or potentially compromised as a result of the Incident discovered by UNITE HERE in October 2023.” The Settlement Class specifically

excludes: (i) UNITE HERE and its officers and directors and the Related Parties; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) any judges assigned to this case and their staff and family; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity resulting in the occurrence of the Incident or who pleads *nolo contendere* to any such charge.

1.27 “Settlement Class Member(s)” or “Member(s)” means a Person(s) who falls within the definition of the Settlement Class.

1.28 “Settlement Fund” shall mean the \$6,000,000 United States Dollars non-reversionary common fund established by Defendant pursuant to Section 2.1 of this Agreement.

1.29 “Settlement Website” means the website described in Section 3.2(c).

1.30 “Settling Parties” means, collectively, UNITE HERE and Plaintiffs, individually and on behalf of the Settlement Class.

1.31 “Short Notice” means the content of the mailed notice to the proposed Settlement Class Members, substantially in the form as shown in the template attached as **Exhibit A** hereto. The Short Notice will direct recipients to the Settlement Website and inform Settlement Class Members of, among other things, the Claims Deadline, the Opt-Out Date, the Objection Date, the requested attorneys’ fees, and the date of the Final Fairness Hearing (as defined below).

1.32 “Unknown Claims” means any of the Released Claims that any Settlement Class Member, including Plaintiffs, does not know or suspect to exist in his/her favor at the time of the release of the Released Persons that, if known by him or her, might have

affected his or her settlement with, and release of, the Released Persons, or might have affected his or her decision not to object to and/or to participate in this Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Plaintiffs intend to and expressly shall have, and each of the other Settlement Class Members intend to and shall be deemed to have, and by operation of the Judgment shall have, waived any Unknown Claims and the provisions, rights, and benefits conferred by California Civil Code § 1542, and also any and all provisions, rights, and benefits conferred by any law of any state, province, or territory of the United States (including, without limitation, California Civil Code §§ 1798.80 *et seq.*, Montana Code § 28-1-1602; North Dakota Cent. Code § 9-13-02; and South Dakota Codified Laws § 20-7-11), which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

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

foregoing waiver is a material element of the Settlement Agreement of which this release is a part.

1.33 “United States” as used in this Settlement Agreement includes all 50 states, the District of Columbia and all territories.

1.34 “Valid Claims” means settlement claims in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or dispute resolution process described in Section 2.6.

2. Settlement Benefits

2.1 Settlement Fund. Defendant and/or its insurers shall fund a non-reversionary common fund of six million dollars (\$6,000,000) as consideration for the releases obtained in this Settlement. Within fourteen (14) days of an order granting preliminary approval of the Settlement, Defendant will pay the amount designated by the Settlement Administrator that is necessary to fund notice to the Settlement Class and claims administration into a non-reversionary cash settlement fund for the benefit of Settlement Class Members. The remainder of the \$6,000,000 (*i.e.*, the amounts remaining to be paid after the initial payment) will be paid into the non-reversionary cash settlement fund within fourteen (14) days of the Effective Date. As set forth below, the Settlement Fund will be used to pay for: (i) Compensation for Documented Out-of-Pocket Expenses (Section 2.3(a)); (ii) Pro Rata Cash Payments (Section 2.3(b)); (iii) Costs of Settlement Administration (Section 2.7); (iv) Credit Monitoring services (Section 2.2); (v) service awards (Section 7.3); and (vi) attorney’s fees and litigation expenses (Section 7.2).

2.2 Credit Monitoring. All Settlement Class Members who submit a Valid Claim using the Claim Form, including necessary supporting documentation, are eligible for two years of three-bureau credit monitoring.

2.3 Expense Reimbursement.

2.3.1 Documented Out-Of-Pocket Expenses. All Settlement Class Members who submit a Valid Claim using the Claim Form, including necessary supporting documentation, are eligible for reimbursement of the following documented Out-of-Pocket Expenses (also referred to herein as “Losses”), not to exceed \$5,000 total per Settlement Class Member, that were incurred as a result of the Incident: (i) unreimbursed bank or credit card fees; (ii) long distance phone charges (only if charged by the minute); (iii) long distance or cell phone charges (only if charged by the minute); (iv) data charges (only if charged based on the amount of data used); (v) postage; and/or (vi) gasoline for local travel; and/or (vii) credit monitoring or other identity theft monitoring purchased by Settlement Class Members between October 20, 2023 and the Claims Deadline. Settlement Class Members must also have made reasonable efforts to avoid, or seek reimbursement for, such Losses, including but not limited to exhaustion of all available credit monitoring insurance and identity theft insurance. Settlement Class Members with Losses must submit substantial and plausible 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 for

Losses, but can be considered to add clarity or support other submitted documentation and a description of how the time was spent.

2.3.2 Pro Rata Cash Fund Payments. All Settlement Class Members are eligible to make a claim for a cash fund payment, regardless of whether they make a claim for Documented Out-of-Pocket Expenses. The pro rata cash fund payments will evenly distribute the net amount of the Settlement Fund after payment of all approved claims for Out-of-Pocket Expenses, Costs of Settlement Administration, the cost of Credit Monitoring, and any attorneys' fee and expense award and service awards, with such net amount to be distributed to each Settlement Class Member who submits a Valid Claim.

2.3.3 Remainder Funds. Any Net Proceeds remaining after all Cash Fund Payments have been made shall be distributed to a charitable organization jointly recommended by the Parties and approved by the Court.

2.3.4 Claim Form. Settlement Class Members seeking reimbursement under this Section 2.3 must complete and submit a Claim Form to the Settlement Administrator, postmarked or submitted online on or before the 75th day after the deadline for the commencement of Notice to Settlement Class Members as set forth in Section 3.2(d) (the "Claims Deadline"). The Notice to the Settlement Class will specify this deadline and other relevant dates described herein. Failure to provide sufficient supporting documentation for Documented Out-of-Pocket Expenses, referenced above, as requested on the Claim Form, shall result in denial of that portion of Documented Out-of-Pocket Expenses for which such documentation is

not provided. No documentation is required to claim Pro Rata Cash Fund Payments, provided the Settlement Class Member properly submits a Valid Claim

2.4 Limitation on Reimbursable Expenses. Nothing in this Settlement Agreement shall be construed as requiring UNITE HERE to provide, and UNITE HERE shall not be required to provide, for a double payment for the same loss or injury that was reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

2.5 Information Security Improvements. Plaintiffs acknowledge receipt of and have verified the information contained therein of a declaration from UNITE HERE attesting to enhanced data security procedures put in place subsequent to the Incident. The content of the declaration is designated as confidential and may not be used for any purpose outside of this litigation. None of the past or future costs associated with the development and implementation of these enhanced security procedures has been or will be paid by Plaintiffs and no portion of the Settlement Fund is to be used for this purpose.

2.6 Dispute Resolution for Claims. The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (i) the claimant is a Settlement Class Member; (ii) the claimant has provided all information needed to complete the Claim Form, including any documentation that may be necessary to reasonably support the expenses described in Section 2.3.1; and (iii) the information submitted could lead a reasonable person to conclude that more likely than not the claimant has suffered the claimed losses as a result of the Incident. The Settlement Administrator may, at any time, request from the claimant, in writing, additional information as the

Settlement Administrator may reasonably require in order to evaluate the claim, *e.g.*, documentation requested on the Claim Form, and required documentation regarding the claimed losses. The Settlement Administrator's initial review will be limited to a determination of whether the claim is complete and plausible. For any claims that the Settlement Administrator determines to be implausible, the Settlement Administrator will submit those claims to the Settling Parties (one lawyer shall be designated to fill this role for Class Counsel). If the Settling Parties do not agree with the claimant's claim, after meeting and conferring, then the claim shall be referred to a claims referee for resolution. The Settling Parties will mutually agree on the claims referee should one be required.

2.6.1 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation to determine whether the claim is facially valid, the Settlement Administrator shall request additional information ("Claim Supplementation") and give the claimant twenty-one (21) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form or thirty (30) days from the Effective Date, whichever comes later. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given a reasonable extension of the twenty-one (21) day deadline in which to comply; however, in no event shall the deadline be extended to later than six (6) months from the Effective Date. If

the defect is not timely cured, then the claim will be deemed invalid and there shall be no obligation to pay the claim.

2.6.2 Following receipt of additional information requested by the Settlement Administrator, the Settlement Administrator shall have ten (10) days to accept, in whole or lesser amount, or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a claim is facially valid, then the claim shall be paid. If the Settlement Administrator determines that such a claim is not facially valid because the claimant has not provided all information needed to complete the Claim Form and enable the Settlement Administrator to evaluate the claim, then the Settlement Administrator may reject the claim without any further action. If the claim is rejected in whole or in part, for other reasons, then the claim shall be referred to the claims referee.

2.6.3 If any dispute is submitted to the claims referee, the claims referee may approve the Settlement Administrator's determination by making a ruling within fifteen (15) days of the claims referee's receipt of the submitted dispute. The claims referee may make any other final determination of the dispute or request further supplementation of a claim within thirty (30) days of the claims referee's receipt of the submitted dispute. The claims referee's determination shall be based on whether the claims referee is persuaded that the claimed amounts are reasonably supported in fact and were more likely than not caused by the Incident. The claims referee shall have the power to approve a claim in full or in part. The claims referee's decision will be final and non-appealable. Any claimant referred to the

claims referee shall reasonably cooperate with the claims referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the claims referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full. The claims referee shall make a final decision within thirty (30) days of the latter of the following events: its receipt of the submitted dispute and receipt of all supplemental information requested.

2.7 Settlement Expenses. All costs for notice to the Settlement Class as required under Sections 3.1 and 3.2, Costs of Settlement Administration under Sections 8.1, 8.2, and 8.3, and the costs of dispute resolution described in Section 2.6, shall be paid from the Settlement Fund by the Settlement Administrator subject to approval by Class Counsel.

2.8 Settlement Class Certification. The Settling Parties agree, for purposes of this settlement only, to the certification of the Settlement Class. If the settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Class provided for herein, will be vacated and the Litigation shall proceed as though the Settlement Class had never been certified, without prejudice to any Person's or Settling Party's position on the issue of class certification or any other issue. The Settling Parties' agreement to the certification of the Settlement Class is also without prejudice to any position asserted by the Settling Parties in any other proceeding, case or action, as to which all of their rights are specifically preserved.

3. Order of Preliminary Approval and Publishing of Notice of Final Fairness Hearing

3.1. As soon as practicable after the execution of the Settlement Agreement, Class Counsel shall submit this Settlement Agreement to the Court as part of a motion for preliminary approval of the Settlement Agreement requesting entry of a mutually agreeable Preliminary Approval Order requesting, *inter alia*:

3.1.1. certification of the Settlement Class for settlement purposes only pursuant to Section 2.8;

3.1.2. preliminary approval of the Settlement Agreement as set forth herein;

3.1.3. appointment of Mason A. Barney and Tyler J. Bean of Siri & Glimstad LLP and John J. Nelson of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC as Class Counsel;

3.1.4. appointment of Plaintiffs as Class Representatives;

3.1.5 approval of a customary form of Short Notice to be e-mailed or mailed by first-class United States Postal Service (“USPS”) mail to Settlement Class Members in a form substantially similar to the template attached as **Exhibit A** hereto;

3.1.6. approval of the Long Notice to be posted on the Settlement Website in a form substantially similar to the template attached as **Exhibit B** hereto, which, together with the Short Notice, shall include a fair summary of the Settling Parties’ respective litigation positions, the general terms of the settlement set forth in the Settlement Agreement, instructions for how to object to or opt-out of the settlement, the process and instructions for making claims to the extent contemplated herein,

the requested attorneys' fees, and the date, time and place of the Final Fairness Hearing;

3.1.7. approval of the Claim Form to be available on the Settlement Website for submitting claims and available in .pdf format on the Settlement Website for or if specifically requested by the Settlement Class Member, in a form substantially similar to the template attached as **Exhibit C** hereto; and

3.1.8. appointment of Kroll Settlement Administration LLC as the Settlement Administrator.

3.2 The Settlement Administrator shall pay for providing notice to the Settlement Class in accordance with the Preliminary Approval Order, and the costs of such notice, together with the Costs of Settlement Administration shall be paid from the Settlement Fund. Any attorneys' fees, costs, and expenses of Class Counsel, and any service awards to the Class Representatives, as approved by the Court, shall be paid from the Settlement Fund as set forth in Section 7 below. Notice shall be provided to Settlement Class Members by the Settlement Administrator as follows:

3.2.1. Class Member Information: Within seven (7) days of entry of the Preliminary Approval Order, UNITE HERE shall provide the Settlement Administrator with the name, physical address, or e-mail, if available, of each Settlement Class Member (collectively, "Class Member Information") that UNITE HERE and/or the Related Parties possess. The Class Member Information and its contents shall be used by the Settlement Administrator solely for the purpose of performing its obligations pursuant to this Agreement and shall not be used for any other purpose at any time. Except to administer the settlement as provided in this

Agreement, or to provide all data and information in its possession to the Settling Parties upon request, the Settlement Administrator shall not reproduce, copy, store, or distribute in any form, electronic or otherwise, the Class Member Information.

3.2.2. Settlement Website: Prior to the dissemination of the Short Notice, the Settlement Administrator shall establish the Settlement Website, which will inform Settlement Class Members of the terms of this Agreement, their rights, dates and deadlines and related information. The Settlement Website shall include, in .pdf format and available for download, the following: (i) the Long Notice; (ii) the Claim Form; (iii) the Preliminary Approval Order; (iv) this Agreement; (v) the Complaint; (vi) Class Counsel's application for attorneys' fees and expenses and the service awards for Class Representatives; and (vii) any other materials agreed upon by the Settling Parties and/or required by the Court. The Settlement Website shall provide Settlement Class Members with the ability to complete and submit the Claim Form, and supporting documentation, electronically.

3.2.3. Short Notice: Within twenty-one (21) days of entry of the Preliminary Approval Order and to be substantially completed not later than forty-five (45) days after entry of the Preliminary Approval Order, subject to the requirements of this Agreement and the Preliminary Approval Order, the Settlement Administrator will provide notice to the Settlement Class members as follows:

- Via postcard to the email address, if available, or postal address, if no email address is available, provided to UNITE HERE and/or the Related Parties by the Settlement Class Members. Before any physical mailing under this paragraph 3.2.3 occurs, the Settlement Administrator shall run the postal addresses of Settlement Class Members through the USPS National Change of Address database

to update any change of address on file with the USPS within twenty-one (21) days of entry of the Preliminary Approval Order.

- In the event that a Short Notice by email is returned to the Settlement Administrator because the email address of the recipient is not valid, the Settlement Administrator shall re-send the Short Notice to the postal address on file within seven (7) days of receiving the returned Short Notice.
- In the event that a Short Notice by USPS is returned to the Settlement Administrator because the postal address of the recipient is not valid, and the envelope contains a forwarding address, the Settlement Administrator shall re-send the Short Notice to the forwarding address within seven (7) days of receiving the returned Short Notice.
- In the event that subsequent to the first mailing of a Short Notice, and at least fourteen (14) days prior to the Opt-Out Date and the Objection Date, a Short Notice is returned to the Settlement Administrator by the USPS because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender” and does not contain a new forwarding address, the Settlement Administrator shall perform a standard skip trace, in the manner that the Settlement Administrator customarily performs skip traces, in an effort to attempt to ascertain the current address of the particular Settlement Class Member in question and, if such an address is ascertained, the Settlement Administrator will re-send the Short Notice within seven (7) days of receiving such information. This shall be the final requirement for mailing.
- The date of the first mailing of the Short Notice shall be deemed the “notice commencement date” for purposes of calculating the opt-out and objection deadlines, and all other deadlines that flow from the notice commencement date.

3.2.4. Publishing: The Settlement Administrator shall publish, on or before the date of mailing the Short Notice, the Claim Form and the Long Notice on the Settlement Website as specified in the Preliminary Approval Order, and maintaining and updating the Settlement Website throughout the claim period;

3.2.5. Help Line: A toll-free help line shall be made available by the Settlement Administrator to provide Settlement Class Members with additional

information about the settlement and to respond to Settlement Class Members' questions. The Settlement Administrator also will provide copies of the Short Notice, Long Notice, and paper Claim Form, as well as this Settlement Agreement, upon request to Settlement Class Members; and

3.2.6. Affidavit of Compliance: Contemporaneously with seeking Final Approval of the settlement, Class Counsel and UNITE HERE shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with this provision of notice.

3.3 The Short Notice, Long Notice, and other applicable communications to the Settlement Class may be adjusted by the Settlement Administrator, respectively, in consultation and agreement with the Settling Parties, as may be reasonable and not inconsistent with such approval.

3.4 Class Counsel and UNITE HERE's counsel shall request that after notice is completed, the Court hold a hearing (the "Final Fairness Hearing") and grant Final Approval of the settlement set forth herein.

3.5 Within 10 days following the Court's entry of the Preliminary Approval Order and pursuant thereto, the Settlement Administrator, on behalf of Defendant, shall cause a CAFA Notice to be served upon the appropriate State and Federal officials. All expenses incurred in connection with the preparation and service of the CAFA Notice by the Settlement Administrator shall be payable from the Settlement Fund.

4. Opt-Out Procedures

4.1 Each Person wishing to opt-out of the Settlement Class shall individually sign and timely submit written notice of such intent to the designated email address or Post

Office box established by the Settlement Administrator. Persons wishing to opt-out of the Settlement Class will only be able to submit an opt-out request on their own behalf; mass or class opt-outs will not be permitted. The written notice must be signed and clearly manifest a Person's intent to be excluded from the Settlement Class. To be effective, written notice must be postmarked (or dated for emails) no later than sixty (60) days after the date on which the notice program commences pursuant to Section 3.2(d).

4.2 All Persons who submit valid and timely notices of their intent to be excluded from the Settlement Class, as set forth in Section 4.1 above, referred to herein as "Opt-Outs," shall not receive any cash benefits of and/or be bound by the terms of this Settlement Agreement. All Persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class in the manner set forth in Section 4.1 above shall be bound by the terms of this Settlement Agreement and Judgment entered thereon.

5. Objection Procedures

5.1 Each Settlement Class Member desiring to object to the Settlement Agreement shall submit a timely written notice of his or her objection to the designated email address or Post Office box established by the Settlement Administrator by the Objection Date. Such notice shall state: (i) the objector's full name, address, telephone number, and e-mail address (if any); (ii) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class (*e.g.*, copy of notice, copy of original notice of the Incident); (iii) a written statement of all grounds for the objection, accompanied by any legal support for the objection the objector believes applicable; (iv) the identity of any and all counsel representing the

objector in connection with the objection; (v) a statement as to whether the objector and/or his or her counsel will appear at the Final Fairness Hearing; (vi) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and (vii) a list, by case name, court, and docket number, of all other cases in which the objector and/or the objector's counsel has filed an objection to any proposed class action settlement within the last three (3) years. To be timely, written notice of an objection in the appropriate form must be mailed to the designated email address or Post Office box established by the Settlement Administrator and contain the case name and docket number *In Re UNITE HERE Data Security Incident Litigation*, Case No. 1:24-cv-01565-JSR no later than sixty (60) days from the date on which the notice program commences pursuant to Section 3.2(d). Any Settlement Class Member who fails to comply with the requirements for objecting in Section 5.1 shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement and shall be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions of Section 5.1. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final order approving this Settlement Agreement, or the Judgment to be entered upon Final Approval shall be pursuant to appeal under the Federal Rules of Appellate Procedure and not through a collateral attack.

6. Releases

6.1 Upon the Effective Date, each Settlement Class Member (who has not timely and validly excluded himself or herself from the settlement), including Plaintiffs,

shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member (who has not timely and validly excluded himself or herself from the settlement), including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, or participating in any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims are asserted.

6.2 Upon the Effective Date, UNITE HERE shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged, Plaintiffs, each and all of the Settlement Class Members, and Class Counsel, of all claims, including, based upon or arising out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims. Any other claims or defenses UNITE HERE may have against such Persons including, without limitation, any claims based upon or arising out of any retail, banking, debtor-creditor, contractual, or other business or union relationship with such Persons that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims are specifically preserved and shall not be affected by the preceding sentence.

6.3 Notwithstanding any term herein, neither UNITE HERE nor its Related Parties, shall have or shall be deemed to have released, relinquished, or discharged any

claim or defense against any Person other than Plaintiffs, each and all of the Settlement Class Members, and Class Counsel.

6.4 Nothing in this Section 6 shall preclude any action to enforce the terms of this Settlement Agreement by Plaintiffs, Settlement Class Members, Class Counsel, and/or UNITE HERE.

7. Attorneys' Fees, Costs, and Expenses; Service Awards to Plaintiffs

7.1 The Settling Parties did not discuss the payment of attorneys' fees, costs, expenses and/or any service award to Plaintiffs, as provided for in Sections 7.2 and 7.3, until after the substantive terms of the settlement had been agreed upon, other than that UNITE HERE would not object to a request for reasonable attorneys' fees, costs, expenses, and a service award to Plaintiffs from the Settlement Fund as may be ordered by the Court.

7.2 Plaintiffs shall seek an award of attorneys' fees not to exceed one-third of the Settlement Fund. Plaintiffs shall also seek reimbursement for reasonable out-of-pocket costs and expenses, in an amount not to exceed \$30,000. The Settlement Administrator shall, from the Settlement Fund, pay the attorneys' fees and expenses award approved by the Court up to the agreed maximum.

7.3 Subject to Court approval, Class Counsel will seek approval of a service award in the amount of \$3,500 to the named Plaintiffs (for a total payment of \$7,000).

7.4 Plaintiffs and Class Counsel shall, within forty-five (45) days following commencement of the notice period file with the Court a motion seeking attorneys' fees, costs, and the service awards set forth herein.

7.5 Within seven days of the Effective Date, the Settlement Administrator shall pay to an account designated by Class Counsel the amount awarded by the Court for attorneys' fees, costs, and the service awards. Class Counsel shall thereafter distribute the

award of attorneys' fees, costs, and expenses and the service awards as necessary, consistent with Sections 7.2 and 7.3.

8. Administration of Claims

8.1 The Settlement Administrator shall administer and calculate the claims submitted by Settlement Class Members under Section 2.2. Class Counsel and UNITE HERE shall be given reports as to both claims and distribution and have the right to review and obtain supporting documentation to the extent necessary to resolve claims administration issues. The Settlement Administrator's and claims referee's, as applicable, determination of whether a Settlement Claim is a Valid Claim shall be binding, subject to the dispute resolution process set forth in Section 2.6.

8.2 Checks or electronic payments for Valid Claims shall be mailed and postmarked within thirty (30) days of the Effective Date, or within thirty (30) days of the date that the claim is approved, whichever is later.

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

8.4 No Person shall have any claim against the Settlement Administrator, claims referee, UNITE HERE, Released Persons, Class Counsel, Plaintiffs, and/or UNITE HERE's counsel based on distributions of benefits to Settlement Class Members.

8.5 Information submitted by Settlement Class Members in connection with submitted claims under this Settlement Agreement shall be deemed confidential and protected as such by the Settlement Administrator, claims referee, Class Counsel, and counsel for UNITE HERE.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

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

9.1.1. the Court has entered the Preliminary Approval Order, as required by Section 3.1;

9.1.2. the Court has entered the Judgment granting Final Approval to the settlement as set forth herein; and

9.1.3. the Judgment has become Final, as defined in Section 1.10.

9.2 If all conditions specified in Section 9.1 hereof are not satisfied, the Settlement Agreement shall be canceled and terminated subject to Section 9.4 unless Class Counsel and counsel for UNITE HERE mutually agree in writing to proceed with the Settlement Agreement.

9.3 Within seven (7) days after the Opt-Out Date, the Settlement Administrator shall furnish to Class Counsel and to counsel for UNITE HERE a complete list of all timely and valid requests for exclusion (the "Opt-Out List").

9.4 In the event that the Settlement Agreement or the releases set forth in Sections 6.1, 6.2, and 6.3 above are not approved by the Court, either preliminarily or finally, or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms: (i) 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 Settling Party's counsel; (ii) the terms and provisions of the 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 (iii) any Judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*. Notwithstanding any statement in this Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of attorneys' fees, costs, expenses, and/or service award shall constitute grounds for cancellation or termination of the Settlement Agreement. Further, notwithstanding any statement in this Settlement Agreement to the contrary, UNITE HERE shall be obligated to pay amounts already billed or incurred by the Settlement Administrator, as of the date the Court denies preliminary or final approval, for costs of notice to the Settlement Class and for Settlement Administration, and shall not, at any time, seek recovery of same from any other party to the Litigation or from counsel to any other party to the Litigation.

10. Miscellaneous Provisions

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

10.2 The Settling Parties intend this settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The settlement

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 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. It is agreed that no Party shall have any liability to any other Party as it relates to the Litigation, except as set forth in the Settlement Agreement.

10.3 Neither the Settlement Agreement, nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability of any of the Released Persons; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Persons may file the Settlement Agreement and/or the Judgment in any action related to the Incident 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.

10.4 The 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.

10.5 The Settlement Agreement contains the entire understanding between UNITE HERE and Plaintiffs regarding the matters set forth herein or otherwise related to the subject matter of the Litigation and supersedes all previous negotiations, agreements, commitments, understandings, and writings between UNITE HERE and Plaintiffs in connection with this Agreement or the Litigation. Except as otherwise provided herein, each party shall bear its own costs. This Agreement supersedes all previous agreements made between UNITE HERE and Plaintiffs. Any other agreements reached between UNITE HERE, Plaintiffs, and any third party, are expressly excluded from this provision.

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

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

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

10.9 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. No assignment of this Settlement Agreement will be valid without the other party's prior, written permission.

10.10 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Settlement Agreement, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Agreement.

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

10.12 All dollar amounts stated herein are in United States Dollars (USD).

10.13 Cashing a settlement check, or receiving an electronic payment, is a condition precedent to any Settlement Class Member's right to receive monetary settlement benefits. All settlement checks shall be void ninety (90) days after issuance and shall bear the language: "This check must be cashed within ninety (90) days, after which time it is void." If a check becomes void, the Settlement Class Member shall have until six (6) months after the Effective Date to request re-issuance by the Settlement Administrator.

10.14 If no request for re-issuance is made within this period, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief shall be extinguished, and UNITE HERE shall have no obligation to make payments to the Settlement Class Member for expense reimbursement under Section 2.3 or any other type of monetary relief. The same provisions shall apply to any re-issued check. For any checks that are issued or re-

issued for any reason more than one hundred eighty (180) days from the Effective Date, requests for re-issuance need not be honored after such checks become void.

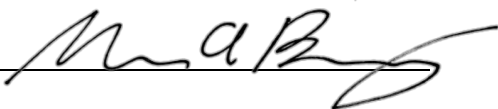
10.15 All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Settlement Agreement.

10.16 No Party makes any representation or warranty to the other regarding the effect that this Agreement and the consummation of the transactions contemplated hereby may have upon the federal, state, local, or other tax liability of the other. Without limiting the foregoing, each Settlement Class Member, Plaintiff, and/or Class Counsel shall be solely responsible for the payment of any taxes attributable to any payments made pursuant to this Agreement, and UNITE HERE shall have no liability to, for, or on behalf of those persons or entities for any federal, state, local, or other tax liability.

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

[Signature blocks on next page]

AGREED TO BY:

By: 

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By: _____

Tamiko Conway, Plaintiff

By: _____

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By:  _____
Tamiko Conway (Dec 30, 2014 20:12 EST)

Tamiko Conway, Plaintiff

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