

Exhibit A

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiffs Vidal Soler and Corey Stewart (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, and Defendants Fresh Direct, LLC and Fresh Direct Holdings, Inc. (“Defendant” or “Fresh Direct”) (together with Plaintiffs, the “Parties”).

RECITALS AND BACKGROUND

WHEREAS, on January 12, 2018, Plaintiff Corey Stewart filed a complaint with the New York City Human Rights Commission (“NYCHRC”) and cross-filed with the Equal Opportunity Employment Commission (“EEOC”) asserting that Fresh Direct violated Plaintiff Stewart and similarly situated applicants’ rights by discriminating against them based upon their criminal conviction record and race in violation of Section 8-107(10), and Section 8-107(11-a) of the New York City Human Rights Law, more commonly known as the Fair Chance Act (“FCA”) of the NYCHRL, and Title VII of the Civil Rights Act of 1964 (“Title VII”) ;

WHEREAS, on April 12, 2020, Plaintiff Vidal Soler filed a Charge of Discrimination with the EEOC alleging that Fresh Direct had violated Title VII and cross-filed with the New York State Division on Human Rights (the “State Division”) asserting that Fresh Direct violated Title VII, New York State Correction Law, § 751, et seq. and New York City Law, § 8-107 by discriminating against him based on color, race and national origin following a criminal background check.

WHEREAS, on March 5, 2021, the EEOC issued a Dismissal and Notice of Rights to Plaintiff Soler’s pending Title VII, NYS Corr. Law and NYCHRL Charges;

WHEREAS, on May 1, 2020, Plaintiffs filed a complaint (the “Complaint”) in the United States District Court for the Southern District of New York on behalf of themselves and all similarly situated job applicants alleging that Defendant violated the New York State Human Rights Law, the New York Corrections Law Article 23-A and NYCHRL by following a discriminatory practice in evaluating applicants for employment with criminal convictions to deny them employment;

WHEREAS, on June 16, 2020, Fresh Direct answered Plaintiffs’ Complaint denying the substantive allegations asserted therein;

WHEREAS, on January 26, 2021, the Parties engaged in a full-day mediation session with the assistance of experienced employment class action mediator Stephen Sonnenberg. Although the Parties did not resolve the dispute at that session of the mediation, the Parties continued negotiating with Mr. Sonnenberg’s assistance;

WHEREAS, on April 15, 2021, the Parties engaged in a second full-day mediation session with Mr. Sonnenberg's assistance, and, though they were unable to reach a settlement agreement, the Parties moved closer to resolving Plaintiffs' claims;

WHEREAS, on May 12, 2021, the Parties engaged in a third full-day mediation session with Mr. Sonnenberg's assistance. There, the Parties reached an agreement in principle and continued to negotiate over the terms of the settlement for three months thereafter;

WHEREAS, Defendant denies any and all liability or damages with respect to the alleged facts and causes of action asserted by Plaintiffs in the Complaint and the EEOC and New York State Division of Human Rights and NYCHRC Charges of Discrimination;

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

WHEREAS, Plaintiffs' counsel has analyzed and evaluated the merits of the claims made against Fresh Direct, and the impact of this Agreement on Plaintiffs and members of the proposed Class, and based upon Plaintiffs' counsel's analysis and evaluation of a number of factors, and recognizing the substantial risks of class litigation, including the possibility that if not settled now, future litigation might not result in any recovery, or might result in a recovery that is less favorable and that would not occur for several years, as well as recognizing that many of the non-monetary elements of this Agreement would have been difficult to achieve through litigation, and are independently significant to members of the Class, Plaintiffs' counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that this Agreement is in the best interests of Plaintiffs and the members of the Class;

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

1. DEFINITIONS

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

- A. Action.** "Action" means this Action, the Putative Class Action Complaint filed by Plaintiffs on or about May 1, 2020, in the United States District Court for the Southern District of New York, styled *Vidal Solar and Corey Stewart v. Fresh*

Direct LLC and Fresh Direct Holdings, Inc., Case No. 20-civ-3434, as currently pending and as may be amended by this Agreement.

- B. Agreement.** “Agreement” or “Settlement” means this Agreement and Release.
- C. Administration Costs.** “Administration Costs” means any and all reasonable fees and costs of the Settlement Administrator paid or incurred for, *inter alia*, creating and mailing Court-ordered notice packets; processing Claim Forms; addressing or responding to Class Members’ non-legal inquiries; advising Class Members of deficiencies in their Claim Forms; preparing affidavits to be filed with the Court and reports to counsel for the Parties; calculating Distribution Amounts; preparing and mailing of distributions of/from settlement funds; obtaining current addresses, preparing tax returns and paying any taxes owed on payments to Participating Class Members and Class Representatives, Class Counsel; and/or any interest earned by the Qualified Settlement Fund (as defined herein), and any and all other fees, costs and/or expenses determined to be reasonably necessary for the administration of the settlement.
- D. Attorney’s Fees** shall not exceed thirty-three and one-third percent (33-1/3%) of Nine Hundred Thousand Dollars (\$900,000.00), subject to Court approval and Fresh Direct will not oppose this request or Class Counsel’s request for their reasonable costs in addition to their fees.
- E. Bar Date.** “Bar Date” means the date that is sixty (60) days from the initial mailing of the Notice. The Bar Date is the deadline for Class Members to fill out and submit a Claim Form, as well as for Class Member Objections or Opt-out Statements, if any.
- F. Claims.** “Claims” means without limitation: (i) any and all claims asserted in this Action; and (ii) all claims under federal, state and city law that arose or accrued during the Relevant Period and related claims asserted or that could have been asserted under federal and state laws of New Jersey, Pennsylvania and Maryland as to Class Members.
- G. Claim Form.** “Claim Form” means the form that Class Members must return by the Bar Date to become Participating Class Members. The Claim Form is subject to approval by the Court. A copy of the Claim Form will be attached to the Notices and displayed on the case website.
- H. Claim Period.** “Claim Period” means the period starting with the initial mailing of the Notice and Claim Form and ending on the Bar Date.

- I. Class Members.** “Class Members” means all the persons who applied for employment to Fresh Direct in New York State during the Relevant Period, who received conditional offers of employment, and who disclosed criminal conviction histories and/or whose background checks revealed criminal conviction histories, which conditional offers were withdrawn for any reason, from January 1, 2015 through July 29, 2021.
- J. Class Counsel.** “Class Counsel” or “Plaintiffs’ Counsel” means Outten & Golden LLP.
- K. Class List.** “Class List” means, based on information and data currently available to Defendant, a list of all Class Members including their names, last known addresses, last known telephone numbers, last known personal email addresses, social security numbers, and date of their application to Fresh Direct.
- L. Consultant.** The “Consultant” will be an Industrial Organization Psychologist (“IOP”) selected by Fresh Direct, from APT Metrics, who has experience conducting professional job analyses and validating selection criteria, including experience in the criminal background check context, tasked with reviewing Fresh Direct’s revised background check policies and practices, in effect at the time of the IOP review. Fresh Direct’s selection of the IOP will be with approval of Class Counsel, consistent with the parties’ settlement discussions.
- M. Complaint.** “Complaint” means the putative Class Action Complaint that Class Counsel filed on May 1, 2020, in the United States District Court for the Southern District of New York, Civil Action No. 20-cv-3431, styled as *Vidal Soler and Corey Stewart v. Fresh Direct, Inc. and Fresh Direct Holdings, Inc.*
- N. Court.** “Court” means the United States District Court for the Southern District of New York, Hon. Analisa Torres presiding.
- O. Cy Pres.** “Cy Pres” means The Fortune Society.
- P. Days.** “Days” means calendar days, unless otherwise noted.
- Q. Declarant.** “Declarant” means Anthony Calderon.
- R. Defendant.** “Defendant” means Defendants Fresh Direct, LLC and Fresh Direct Holdings, Inc., including all subsidiaries and affiliates.

- S. **Defendant's Counsel.** "Defendant's Counsel" means Epstein Becker & Green, P.C.
- T. **Employment Payroll Taxes.** "Employment Payroll Taxes" means all FICA, FUTA, and SUTA payment obligations, which are withheld as a result of payments made to Participating Class Members under the terms of Agreement (regardless of whether said taxes would otherwise be paid by Defendant or the Participating Class Member), which will be paid by the Settlement Administrator from the Qualified Settlement Fund (as defined below) before Distribution Amounts are disbursed to Participating Class Members (as defined below).
- U. **Effective Date.** The "Effective Date" of the Settlement shall mean not later than three (3) days after the latest of the following dates: (1) the expiration of time for appeal from the Final Approval Order; or (2) if there is an appeal from the Final Approval Order, the date after all appeals are finally resolved in favor of final approval.
- V. **Fairness Hearing.** "Fairness Hearing" means the hearing before the Court relating to the Motion for Final Approval.
- W. **Final Approval Order.** "Final Approval Order" means an order that finally and unconditionally grants final approval of the Settlement, grants final certification of the Settlement Class for settlement purposes only, authorizes payments to the Participating Class Members, the Settlement Administrator, and Class Counsel, as provided in this Agreement, and fully and finally extinguishes the Claims of the Class Members as set forth herein, and dismisses the Action with prejudice, which the Parties shall submit in a mutually agreed upon form.
- X. **Gross Settlement Amount.** "Gross Settlement Amount" means the maximum settlement sum paid by Defendant, which amount shall not under any circumstance exceed Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) to Named Plaintiffs and Class Members to resolve their claims, inclusive of Service Awards to Named Plaintiffs and Declarant, Court-approved Attorneys' Fees and Lawsuit Costs, the Settlement Administrator's fees and expenses, and Employment Payroll Taxes and employee income tax withholdings from the wage portion of any Individual Settlement Amount.
- Y. **Individual Settlement Amount.** "Individual Settlement Amount" means the payment to be distributed to each Participating Class Member in accordance with

the allocation formula set forth in Section 9.3 herein, and to be distributed by the Settlement Administrator from the Net Settlement Amount.

- Z. Lawsuits Costs.** “Lawsuit Costs” means all litigation expenses and costs incurred in this case by Class Counsel (defined above). Class Counsel represents that such Lawsuit Costs are estimated to be no more than \$30,000 for this Action.
- AA. Litigation.** “Litigation” means the civil action *Soler v. Fresh Direct, LLC*, Case No. 1:20-cv-03431 (S.D.N.Y).
- BB. Named Plaintiff(s).** “Named Plaintiff” or “Named Plaintiffs” means any individual Plaintiff in the Litigation who fully executes this Agreement.
- CC. Net Settlement Amount.** “Net Settlement Amount” means the Gross Settlement Amount, plus any applicable interest, less: (1) Court-approved Service Awards for the Named Plaintiffs and Declarant; (2) Court-approved Attorneys’ Fees and Lawsuit Costs; (3) the Settlement Administrator’s fees and expenses; and (4) Employment Payroll Taxes as defined above.
- DD. Notice.** “Notice” means the Court-approved Notice of Proposed Settlement of Class Action Lawsuit, as authorized in the Preliminary Approval Order, substantially in the form set forth as Exhibit A hereto.
- EE. Objector.** “Objector” means an individual Class Member who properly files an objection to this Agreement, but does not include any individual Class Member who opts out of this Agreement.
- FF. Opt-out Statement.** “Opt-out Statement” is a written, signed statement that an individual Class Member has decided to opt out and not be included in this Agreement.
- GG. Parties.** “Parties” are the Named Plaintiffs and Defendant.
- HH. Participating Class Member.** “Participating Class Member” means any Class Members who did not exclude themselves from the Agreement and submits a Claim Form.
- II. Preliminary Approval Order.** “Preliminary Approval Order” means the Order entered by the Court: (1) preliminarily certifying the Class solely for purposes of effectuating this Agreement; (2) preliminarily approving the terms and conditions

of this Agreement; (3) appointing Class Counsel as defined above; (4) directing the manner and timing of providing Notice to the Class Members; and (5) setting dates to effectuate the terms of this Agreement, including the date of the Fairness Hearing.

JJ. Qualified Settlement Fund. “Qualified Settlement Fund” or “QSF” means the Qualified Settlement Fund to be established under Section 468B of the Internal Revenue Code established and administered by the Settlement Administrator for the Gross Settlement Amount paid by Defendant. The QSF will be controlled by the Settlement Administrator subject to the terms of this Agreement and the Court’s Orders for Preliminary and Final Approval.

KK. Released Class Claims. “Released Class Claims” means all claims for Class Members under federal, New York State and New York City law that arose or accrued during the Relevant Period (as defined below) as to Plaintiffs’ allegation in their Complaint and EEOC Charge that Fresh Direct improperly denied them and Class Members employment due in whole or in part to their criminal history and/or their race, color and/or national origin (if the claim is predicated in whole or in part on criminal history as to a claim for race, color and/or national origin discrimination), including, but not limited to, claims in Plaintiffs’ Complaint under the New York State Human Rights Law, Article 23-A of the New York State Corrections Law, the New York City Human Rights Law, the New York City Fair Chance Act, and claims asserted under Title VII of the Civil Rights Act of 1964 in Plaintiffs’ EEOC Charge, and applicable New Jersey, Pennsylvania and Maryland state and local laws arising thereunder. Nothing in this release is intended to release discrimination claims not predicated in whole or in part on criminal history.

LL. Released Parties. “Released Parties” means Defendant, all of Defendant’s current corporate affiliates, including predecessors, successors, assigns, current and former employees, shareholders, officers, directors, members, managers, agents, subcontractors, attorneys, insurers, subsidiaries, divisions, parent companies, holding companies or affiliated corporations, partnerships, limited liability companies or other organizations, investors, all of their customers, vendors and agents, their insurers, and all persons acting by, through, under or in concert with them. For the avoidance of doubt, this release does not include third-party contractors like Vertex Global Solutions, Inc.

- MM. Relevant Period.** “Relevant Period” means be the period from January 12, 2015, through July 29, 2021, for the NYCHRL Class, and May 1, 2017, through July 29, 2021, for the NYHRL Class.
- NN. Service Award.** “Service Award” means Court-approved compensation awarded to Named Plaintiffs and Declarant for their roles in the case.
- OO. Settlement Administrator.** “Settlement Administrator” means the company selected by Class Counsel with Defendant’s approval, through competitive bidding, and unaffiliated with either party or any involved law firms, retained by the Parties to administer Notice and distribution of settlement monies.
- PP. Settlement Check.** “Settlement Check” means the check issued to each Participating Class Member for their share of the Net Settlement Amount, calculated in accordance with this Agreement.

2. APPLICATION FOR PRELIMINARY APPROVAL

- A. Timing.** Within fourteen (14) days after the execution of this Agreement, Class Counsel shall file a motion for preliminary settlement approval (“Preliminary Approval Motion”) on the docket in the Litigation.
- B. Preliminary Approval Motion.** The Preliminary Approval Motion shall include (1) the proposed Notice, attached hereto as Exhibit A; (2) the proposed Claim Form, attached hereto as Exhibit B, (3) a proposed Preliminary Approval Order in the form attached hereto as Exhibit C; (4) an executed version of this Agreement; and (5) the necessary documents, memorandum, affidavits, and other exhibits for purposes of certifying the Class for settlement purposes only and preliminarily approving the Agreement. The Preliminary Approval Motion will seek the setting of a Fairness Hearing for final approval of the Settlement before the Court at the earliest practicable date.

The Motion for Preliminary Approval will also include a request that the Court, consistent with its authority pursuant to the All Writs Act, 28 U.S.C. § 1651(a), enjoin all Class Members from filing, commencing, prosecuting, intervening, or participating in any lawsuit in any jurisdiction asserting Released Class Claims against Defendant on behalf of any Class Members. The Preliminary Approval Motion will request that the Court issue an injunction as broad and comprehensive as permitted and that such injunction be included in the Preliminary Approval Order and the Final Approval Order. In connection with seeking Preliminary

Approval, the Parties will ask the Court to schedule and conduct a Final Approval hearing regarding the Settlement (the “Final Approval Hearing”), and to grant final approval of the Settlement (“Final Approval”) no earlier than the time period required by 28 U.S.C. § 1715, and as soon thereafter as practicable, after the Preliminary Approval Date.

3. SETTLEMENT ADMINISTRATOR

- A. **Retention.** The Settlement Administrator will be selected by Class Counsel with Defendant’s approval, through competitive bidding for a price. The Settlement Administrator will be unaffiliated with either party or any involved law firms. The Settlement Administrator shall at all times maintain bonding and insurance coverage sufficient to secure the Gross Settlement Amount.
- B. **Settlement Administrator Costs.** The Settlement Administrator’s fees and expenses will come out of the Gross Settlement Amount.
- C. **Responsibilities of the Settlement Administrator.** The Settlement Administrator shall be responsible for: preparing and disseminating Class Action Fairness Act (“CAFA”) notice(s) (28 U.S.C. § 1715), as directed by Defendant’s counsel; preparing, printing, and disseminating to Class Members the Notice and Claim Form, as provided herein; performing skip traces and resending, within one day of receipt, any Notice and Claim Form returned without a forwarding address or resending to those with a new forwarding address; responding to requests or communications made by the Parties; preparing, monitoring, and maintaining a telephone number with phone answerers; promptly furnishing to counsel for the Parties copies of any Objections and requests for exclusion that the Settlement Administrator receives; keeping track of requests for exclusion, Objections, or otherwise, including maintaining the original mailing envelope in which the request was mailed; distributing the Settlement Checks to Participating Class Members; preparing, sending, and/or wire transferring Class Counsel’s Court-approved Attorneys’ Fees and Lawsuit Costs; mailing Service Awards in accordance with this Agreement and the Final Approval Order; referring to Class Counsel all inquiries by Class Members regarding matters not within the Settlement Administrator’s duties specified herein; responding to the inquiries of Class and Defendant’s Counsel consistent with the Settlement Administrator’s duties specified herein; promptly apprising counsel for the Parties of the activities of the Settlement Administrator; maintaining adequate records of its activities, including the dates of the mailing of Notices and Claim Forms, returned mail and other communications and attempted written or electronic communications with Class Members, confirming in writing to Class Counsel and Defendant’s Counsel

its completion of the administration of the Agreement; timely responding to communications from the Parties and their counsel; calculating the Individual Settlement Amounts; reporting on the status of the settlement to the Parties on a weekly basis (including, but not limited to, the number of Notices mailed, returned as undeliverable, and re-mailed; the number of requests for exclusion received; and any other pertinent information); notifying counsel for all Parties of all timely and untimely submissions; providing a compliance affidavit in connection with the Application for Final Approval; locating Class Members, including calling Class Members, if necessary; establishing and administering the QSF; calculating and paying, as provided herein, all appropriate taxes and complying with all applicable tax reporting obligations, including preparing and filing all applicable tax forms; and such other tasks as set forth herein, or as the Parties mutually agree.

- D. Access to the Settlement Administrator.** The Parties will have equal access to the Settlement Administrator and information provided to the Settlement Administrator. Defendant agrees to cooperate with the Settlement Administrator to facilitate Defendant's obligations in this Agreement.

4. NOTICE

- A. Class List.** Within thirty (30) days after entry of the Preliminary Approval Order, Defendant's Counsel shall provide the Settlement Administrator and Class Counsel with the Class List.
- B. Notice Content.** The Notice will include a description of the claims and this Agreement, an estimate of each Class Member's Individual Settlement Amount, and detail regarding the opportunity to receive a Settlement Check, including a copy of the Claim Form as well as a link and/or a QR code directing Class Members to a digital version of the Claim Form, and the opportunity to object or opt out, and/or appear at the Fairness Hearing.
- C. Claim Form Content.** The Claim Form will be included with the notice. The form will include space for the Participating Class Member to fill in their name; contact information, including address, email, and phone; social security number;; race; and whether they would prefer a check or electronic payment, including space to fill in information about where to direct the electronic payment. The Claim Form will also ask the Participating Class Member to certify they applied for a job with Defendants and were not hired, at least in part, because of their criminal history.

- D. Notice Distribution.** Within sixty (60) days after entry of the Preliminary Approval Order, the Settlement Administrator shall send the Court-approved Notice and Claim Form to all Class Members via First Class United States Mail email, and text message (where available).
- E. Skip Trace and Re-mailing.** The Settlement Administrator will use all commercially reasonable means to confirm Class Members' addresses and obtain new addresses as necessary. In the event that a Notice mailed to a Class Member is returned as undeliverable, the Settlement Administrator shall attempt to obtain the correct address of such person, including up to two (2) skip traces, and shall attempt a re-mailing provided it obtains a more recent address; provided, however, that skip traces shall be performed no later than forty-five (45) days after the initial dissemination of the Notice. The Settlement Administrator shall also mail and/or email a Notice to any Class Member who contacts the Settlement Administrator or Class Counsel during the time period between the initial mailing of the Notice and the Bar Date and requests a Notice and Claim Form.

5. CLASS MEMBER OPT-OUTS

- A.** Class Members who choose to opt out of the settlement as set forth in this Agreement must mail via First-Class United States Mail a written, signed statement to the Settlement Administrator that states that they are opting out of the settlement, and include their name, address, telephone number, and a statement indicating his or her intention to opt-out, such as: "I opt out of the Fresh Direct applicant settlement." ("Opt-out Statement"). To be effective, an Opt-out Statement must be post-marked or otherwise received by the Bar Date.
- B.** The Settlement Administrator will stamp the received date on the original of each Opt-out Statement that it receives and shall serve copies of each Opt-out Statement on Class Counsel and Defendant's Counsel no later than three (3) days after receipt. The Settlement Administrator shall provide all Opt-out Statements in its compliance affidavit to be filed with the Application for Final Approval. The Settlement Administrator will retain the stamped originals of all Opt-out Statements and the originals of all envelopes accompanying Opt-out Statements in its file until such time as the Settlement Administrator is relieved of its duties under this Agreement.

6. OBJECTIONS TO THE SETTLEMENT

- A. Class Members who wish to present objections to the Settlement or the Agreement at the Fairness Hearing must first do so in writing (“Objection”). To be considered, such Objection must be mailed to the Settlement Administrator by First-Class United States Mail and post-marked by or otherwise received by the Bar Date. The Objection must include all reasons for objecting to the settlement or the Agreement, and any supporting documentation. The Objection must also include the name, address, and telephone number for the Class Member making the objection (the “Objector”). The Settlement Administrator will stamp the date received on the original and send copies of each Objection and any supporting documentation, as well as a copy of the Notice mailed to the Objector to Class Counsel and Defendant’s Counsel by email no later than three (3) days after receipt of the Objection. A Class Member who opts out may not object.

- B. An Objector has the right to appear at the Fairness Hearing either on his or her own behalf or through counsel hired by the Objector. An Objector who wishes to appear at the Fairness Hearing must state his or her intention to do so in writing on his or her Objection at the time he or she submits his or her written Objection. An Objector may withdraw his or her Objection at any time.

- C. The Parties may file with the Court written responses to any filed Objections no later than three (3) days before the Fairness Hearing.

7. FAIRNESS HEARING AND APPLICATION FOR FINAL APPROVAL

- A. **Content.** After the Bar Date, in accordance with the schedule set by the Court in the Preliminary Approval Order and in advance of the Fairness Hearing, Class Counsel shall file supporting documents and materials for Final Approval of the Settlement (“Final Approval Motion”). The Final Approval Motion will include a compliance affidavit from the Settlement Administrator; an application for Attorneys’ Fees, Lawsuit Costs, and Service Awards; supporting affidavits and documentation from Class Counsel regarding the fairness, adequacy, and reasonableness of the settlement or any aspect related to this Agreement; and a proposed Final Approval Order. At the Fairness Hearing and through the Final Approval Motion, Named Plaintiffs shall request that the Court, among other things: (1) finally certify the Class for purposes of settlement only; (2) approve the settlement and this Agreement as fair, reasonable, adequate, and binding on all Participating Class Members; (3) order the Settlement Administrator to disburse Settlement Checks to Participating Class Members; (4) order Service Awards, attorneys’ fees and costs, and the Settlement Administrator’s fees and expenses to be paid from the QSF; (5) order dismissal with prejudice of the Released Class

Claims, in accordance with this Agreement; (6) order entry of the Final Approval Order, in accordance with this Agreement; and (7) retain jurisdiction over enforcement of the terms of this Agreement and Release.

8. TERMINATION

A. Grounds for Settlement Termination.

1. Failure to Obtain Approval. This Agreement is not contingent upon approval by the Court of Class Counsel's application for attorneys' fees, and if the Court approves the settlement payments allocated to Participating Class Members as set forth in this Agreement, but not the application for Attorneys' Fees and Lawsuit Costs, the Agreement may not be terminated. Defendant will not oppose (a) an application for Attorneys' Fees of up to one-third of the Gross Settlement Amount, plus Lawsuit Costs, to be paid out of the Gross Settlement Amount, and/or (b) a motion for reconsideration of such application.

2. In the event that: (a) the Court does not preliminarily approve the Settlement as provided herein; (b) the Court does not finally approve the Settlement as provided herein; (c) the Court alters any material term of the Agreement, including, but not limited to, increasing the amounts required to be paid by Defendant; (d) the Court does not certify the Rule 23 Class; or (e) the Settlement does not become Final for any other reason, the Parties agree to engage in follow-up negotiations with the intent of resolving the Court's concerns that precluded Preliminary or Final Approval or denial of Rule 23 Class certification, and, if feasible, to resubmit the Agreement for approval within thirty (30) days. If the Settlement is not approved as resubmitted, if the Court continues to deny certification of a Rule 23 Class, or if the Parties are not able to reach another agreement, either Party may void this Agreement within fourteen (14) days of notice of such event. The Parties agree that Defendant being required to pay any amount greater than the Gross Settlement Amount would constitute a material change in this Agreement. The Parties further agree that any ruling that the Court may make regarding Class Counsel's motion or petition for an award of Attorney's Fees and Lawsuit Costs shall not constitute a material change in this Agreement, unless the Court's award regarding any fees or costs would have the effect of requiring Defendant to pay any amount greater than the Gross Settlement Amount.

3. Class Member Opt-Outs. Prior to issuance of any Final Approval Order, Defendant may elect to terminate the Agreement if more than eight percent (8%)

of Class Members opt out of the settlement. If Defendant elects to terminate the Agreement on this basis, Defendant shall notify Class Counsel of its decision to terminate the Agreement on or before the date of the Fairness Hearing pursuant to the procedures set forth in Section 8 herein.

B. Procedures for Termination. To terminate this Agreement, the terminating Party shall give written notice to the other Party via email.

C. Effect of Termination. Termination shall have the following effects:

i. This Agreement shall be terminated as to the affected Parties and shall have no force or effect. Should this Agreement be terminated pursuant to this Section of the Agreement and Release, the fact of settlement, the amount of settlement, the terms and conditions of this Agreement and Release, the Proposed Settlement Term Sheet, dated August 26, 2021, and Programmatic Updates shall not be used as evidence in any subsequent proceeding in this Litigation.

ii. Defendant shall have no obligation to make any payments to any Party, Class Member, Declarant or Class Counsel, except that the terminating party shall be responsible for: (a) the fees and expenses of the Settlement Administrator for work performed subsequent to the signing of this Agreement; and (b) the fees and expenses of the Settlement Administrator associated with the mailing of the termination notice to Class Members informing them of the settlement termination, if any.

iii. If the Court grants Preliminary Approval, but declines to grant Final Approval, or the Rule 23 class fails to be certified, or the Effective Date does not occur, the Settlement Administrator will issue a Court-approved notice to Class Members that the Agreement did not receive Final Approval and that, as a result, no payments will be made to Participating Class Members under the Agreement. Such notice shall be sent by the Settlement Administrator via email, text message, and First-Class United States Mail. The parties shall split the expenses of the Settlement Administrator incurred through the date the court denies Final Approval and the issuance of Notice to Class Members provided in this paragraph.

iv. The Parties may jointly or independently seek reconsideration of a ruling by the Court declining to enter the Preliminary Approval Order or Final Approval Order in the form submitted by the Parties, or seek approval of a renegotiated settlement.

v. The Litigation will resume as if no settlement had been attempted and the Agreement and all negotiations, statements, Proposed Settlement Term Sheet executed by the Parties on August 26, 2021, and Programmatic Updates, and proceedings relating thereto shall be without prejudice to the right of any of the Parties, all of whom shall be returned to their respective positions in this case *nunc pro tunc* as of the date of the Term Sheet (August 26, 2021). Defendant retains the right to contest whether the claims should be maintained as a class action and to contest the merits of the claims being asserted. The Preliminary Approval Order approving the settlement and certifying the Class for settlement purposes only shall be null and void, and the case may be certified only if Plaintiffs are granted class certification after full briefing on a motion for such certification, and Defendant has an opportunity to respond to such motion, or if the Parties otherwise agree.

9. SETTLEMENT TERMS

- A. Gross Settlement Amount.** Defendant agrees to pay a Gross Settlement Amount of no more than Nine Hundred Thousand Dollars (\$900,000) in accordance with this Agreement to fully and finally resolve this Action in its entirety, inclusive of all Attorneys' Fees and Lawsuit Costs; interest; Administration Costs; Distribution Amounts, liquidated, punitive and multiplier of damages; taxes; Employment Payroll Taxes; and Service Awards. Defendant shall not be responsible for any taxes imposed by federal, state, or local law on the Participating Class Members as a result of payments made to the Participating Class Members, or any other sums in excess of the Gross Settlement Amount. The amounts necessary to make the aforesaid payments shall be paid from the Gross Settlement Amount, which in no case shall exceed Nine Hundred Thousand Dollars (\$900,000.00).
- B. Funding.** By no later than ten (10) days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund ("QSF").
- C.** Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund ("QSF") as follows: Within ten (10) days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into an interest-bearing account mutually agreed to by Class Counsel and Defendant's Counsel and to be under the control of the Settlement Administrator and designated as a QSF for distribution in accordance with the terms of the Agreement.
- D.** Defendant's payments into the QSF shall be treated as a payment of a Qualified or Designated Settlement Fund under I.R.C. § 468B and the regulations or proposed

regulations promulgated thereunder (including, without limitation, Treasury Reg. § 1.468B-1-5 or any successor regulation).

- E.** The QSF will be established by the Settlement Administrator pursuant to the Internal Revenue Code and insured and guaranteed to the full extent permissible under 12 CFR § 370.4. Any funds on deposit in the QSF shall be deemed and considered to be in *custodia legis* of the Court. The QSF will be created as an interest bearing account, and the Settlement Administrator will prepare any tax returns on any interest earned by the QSF and pay such taxes from the QSF.
- F.** Within seven (7) days of the issuance of the Final Approval Order and the Court's ruling on the amounts to be awarded for (a) Attorneys' Fees and Lawsuit Costs, (b) Service Awards, (c) the Administration Costs, (d) Distribution Amounts and (e) Employment Payroll Taxes, final Distribution Amount calculations shall be provided to Defendant's Counsel and Class Counsel.
- G.** The Parties acknowledge and agree that no portion or part of the Gross Settlement Amount or any payment hereunder is being made as a fine or penalty to any governmental agency.
- H.** The Settlement Administrator will act as escrow agent and will have the authority to release the settlement funds from escrow immediately for purposes of administering the settlement reflected in this Agreement immediately following the Effective Date.
- I.** The Settlement Administrator will provide Class Counsel and Defendant's Counsel with weekly reports of claims, objections, and opt outs, throughout the Claims Period.
- J.** Within seven (7) days of the issuance of the Final Approval Order, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with a report of the Participating Class Members, opt out notices and objections, and the total number of Participating Class Members and the Distribution Amount to be made to each Participating Class Member. After receiving the Claims Administrator's report, Class Counsel and Defendant's Counsel shall jointly review the same to determine if the calculation of payments to Participating Settlement Class Members is consistent with this Agreement.
- K.** The Gross Settlement Amount, which under no circumstances shall exceed Nine Hundred Thousand Dollars (\$900,000.00), shall be distributed by the Settlement Administrator as follows:

 - i.** First, all Court-approved Attorneys' Fees;
 - ii.** Second, all Court-approved Lawsuit Costs;
 - iii.** Third, any Court-approved Service Awards;

- iv. Fourth, all Court-approved Administration Costs, including, but not limited to, the payment of any taxes (including any estimated taxes, interest, or penalties) due as a result of interest income, if any, earned by the QSF;
 - v. Fifth, all Employment Payroll Taxes; and
 - vi. Sixth, Distribution Amounts to Participating Class Members.
- L. The Settlement Administrator shall withhold from the Distribution Amount payable to each Participating Class Members' share all federal, state and local income and employment taxes required to be withheld under the law, prepare and deliver the necessary tax documentation for signatures by all necessary parties, and cause the appropriate deposits of withholding taxes and informational and other tax return filing to occur.
- M. The Settlement Administrator, in cooperation with Defendant, shall calculate the Employment Payroll Taxes, prepare and deliver the necessary tax documentation for signatures by all necessary parties, and cause the appropriate deposits of Employment Payroll Taxes and informational and other tax return filing to occur.
- N. The Settlement Administrator will provide copies of all cancelled settlement checks, including payments of Distribution Amounts, Service Awards and Attorneys' Fees and Lawsuit Costs, to Defendant's Counsel and Class Counsel.
- O. The Settlement Administrator shall provide proof of bonding and insurance coverage sufficient to secure the Gross Settlement Amount.
- P. The Settlement Administrator shall execute a non-disclosure agreement in a form agreed to by Defendant's Counsel and Class Counsel.
- Q. **Unclaimed Funds.** Any portion of the Net Settlement Amount not distributed as per the terms hereof, including any Settlement Checks not cashed after the expiration of one-hundred and twenty (120) days following issuance of Settlement Checks to Participating Class Members shall be redistributed to Participating Class Members, if economically feasible. If a redistribution to Participating Class Members is not economically feasible, or additional funds remain after redistribution, those amounts shall be redistributed to the Cy Pres. The Settlement Administrator will send out reminder postcards via e-mail, text message, and First Class U.S. Mail within sixty (60) days after the initial distribution of checks to participating Class Members reminding them to negotiate their checks prior to the one hundred twenty (120) day deadline.
- R. If economically reasonable (i.e. it does not substantially increase the costs of settlement administration), each check delivered to a Class Member shall have an

endorsement, to wit: “By signing and cashing this check, I agree to release Fresh Direct Holdings LLC and its parents, subsidiaries, officers and directors and their successors and assigns, of all claims criminal history and/or race, color and/or national origin discrimination (if the claim is predicated on criminal history as to a claim for race, color and/or national origin discrimination) that I may have against them, including but not limited to, arising under Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, Article 23-A of the New York State Corrections Law, the New York City Fair Chance Act, the New York City Human Rights Law, and the applicable state laws of New Jersey, Maryland, and Pennsylvania.” To the extent this release is too long for a check, the parties agree to confer in good faith over revised language that captures the substance of this information.

9.1 Attorneys’ Fees and Lawsuit Costs

- A.** At the Fairness Hearing and through the Application for Final Approval, Class Counsel will petition the Court for an award of attorneys’ fees of up to one-third of the Gross Settlement Amount, plus reimbursement of actual Lawsuit Costs to be paid from the QSF. Defendant will not oppose this application, including any appeal or request for reconsideration if the application is denied or modified by the Court.
- B.** The substance of Class Counsel’s application for Attorneys’ Fees and Lawsuit Costs is to be considered separately from the Court’s consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of any proceeding related to Class Counsel’s application for fees and costs shall not terminate this Agreement or otherwise affect the Court’s ruling on the Motion for Final Approval. Any amount of Class Counsel’s application for Attorneys’ Fees and Lawsuit Costs not approved by the Court shall become part of the Net Settlement Amount to be distributed to Participating Class Members.
- C.** Payment to Class Counsel of Court-approved fees and costs from the Gross Settlement Amount shall be made fourteen (14) days after the Effective Date.

9.2 Service Awards

- A.** In return for their services rendered to the Class, Named Plaintiffs will apply to the Court to receive up to Ten Thousand Dollars (\$10,000) each as Service Awards from the Gross Settlement Amount. Declarant will apply to the Court to receive up to Five Thousand Dollars (\$5,000) as a Service Award from the Gross

Settlement Amount. As stated above, service awards are only available to Named Plaintiffs and the Declarant, if they agree to and sign the settlement agreement.

- B. The application for Service Awards is to be considered separately from the Court's consideration of the fairness, reasonableness, adequacy, and good faith of the settlement of the Litigation. The outcome of the Court's ruling on the application for Service Awards shall not terminate this Agreement or otherwise affect the Court's ruling on the Motion for Final Approval, Final Approval Order, or the fairness or reasonableness of this Agreement. Defendant will not oppose Named Plaintiffs' and Declarant's application for Service Awards. Any amount not approved by the Court for Service Awards shall become part of the Net Settlement Amount to be distributed to Participating Class Members.
- C. A mutual general release will be executed by Fresh Direct and the Named Plaintiffs and Declarant, as set forth in Section 11.B, in consideration for receipt of the Service Awards.
- D. The Settlement Administrator will mail Court-approved Service Awards to the Named Plaintiffs and Declarant within fourteen (14) days after the Effective Date.

9.3 Participating Class Member Payments

- A. **Allocation.** Each Participating Class Member's Individual Settlement Amount will be an equal amount calculated by dividing the Net Settlement Amount by the total number of Participating Class Members. The Individual Settlement Amount shall not exceed \$30,000.
- B. **Timing of Payments.** Fourteen (14) days after the Effective Date, the Settlement Administrator will mail Settlement Checks to all Participating Class Members.
- C. **Check Cashing Period.** Participating Class Members who select payment by check will have one hundred and twenty (120) days from the date the Settlement Checks are issued by the Settlement Administrator to cash, deposit, or otherwise negotiate their Settlement Check.
- D. **Check Cashing Reminders.** The Settlement Administrator shall send reminders via email, text message, and First-Class United States Mail within sixty (60) days after the issuance of Settlement Checks to Participating Class Members who have not yet cashed their Settlement Check reminding them to negotiate their Settlement Check prior to the one hundred and twenty (120) day deadline.

9.4 Tax Characterization of Payments

- A. For tax purposes, the payments to Participating Class Members pursuant to Section 9.3 shall be treated as fifty percent (50%) W-2 wages (“Wage Portion”) and fifty percent (50%) 1099 non-wage income as statutory penalties (“Non-wage Portion”).
- B. Tax allocations will be determined by the Settlement Administrator. For the Wage Portion, the Settlement Administrator shall be responsible for making proper tax withholdings and complying with tax reporting obligations. All taxes shall be paid from the Gross Settlement Amount. Defendant and the Settlement Administrator shall exchange such information as is necessary for the Settlement Administrator to make proper tax withholdings and comply with tax reporting obligations as described herein.

10.5. Programmatic and Injunctive Relief

- A. Selection. Defendant Fresh Direct, on behalf of itself and its subsidiaries including, but not limited to, U.T.F. Trucking, Inc. shall select a Consultant with experience conducting professional job analyses and validating selection criteria, including experience in the criminal background check context to serve as an independent consultant, subject to input and the approval of Class Counsel, which shall not be unreasonably withheld. The Consultant’s rate of pay shall be capped at an amount to be negotiated by the Parties.
- B. Phase 1 Evaluation. Within thirty (30) days after the execution of the Agreement, Fresh Direct will engage the Consultant to perform services as set forth below:
 - i. Following the Consultant’s agreement to and execution of a confidentiality agreement, the Consultant shall review Fresh Direct’s revised background check policies and practices, which shall become effective on or before July 29, 2021 with the intent to comply with the amendments of the New York City Fair Chance Act, effective July 29, 2021. Such review shall take into consideration applicable federal, state and local laws addressing the use and consideration of criminal background check records when making employment-related decisions. As part of this review, Fresh Direct shall promptly provide to the Consultant all relevant and accessible information relating to Fresh Direct’s adjudication guidelines and practices, effective July 29, 2021, relating to the use and consideration of criminal history background checks in hiring, and it shall reasonably work to provide additional information, if any, requested by the Consultant.
 - ii. No later than forty-five (45) days after being provided the information identified in subparagraph i, or such later date as may be agreed to by the Parties, the Consultant shall provide to the Parties written recommendations, including proposed modifications (“Recommendations”), consistent with the Consultant’s review of Fresh Direct’s revised background check policies and

practices, effective July 29, 2021, and the applicable laws referenced in subparagraph i.

- iii. Those Recommendations may include ongoing work particularly around developing valid suitability determination strategies relating to criminal history records; utilizing job analyses to map when, where, and how criminal history records may disqualify an applicant given the particular duties and requirements, including the work environment, of the job at issue; and developing a list of convictions that are considered to be non-job related and, therefore, considered not disqualifying for any particular job or job group.¹ It is agreed among the Parties that the Consultant's Recommendations shall not impose obligations on Fresh Direct that exceed the requirements of any applicable federal, state or city laws. It is also agreed among the Parties that the Consultant's Recommendations shall be based upon Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, Article 23-A of the New York State Corrections Law, the New York City Fair Chance Act, and applicable New Jersey, Pennsylvania and Maryland laws; provided, however, that only the applicable laws of the specific jurisdictions (e.g. New York City, New York State and federal law) will be applied to criminal convictions in that specific jurisdiction.
- iv. For each recommendation of the Consultant that Fresh Direct agrees to, it shall inform the Consultant and Class Counsel of the same. In such case, no further steps need to be taken by Fresh Direct. Fresh Direct will implement the Consultant's Recommendations within thirty (30) days of receipt of the Consultant's written report and Recommendations or, if more time is needed, specify the date by when the Recommendations shall be implemented.
- v. If Fresh Direct agrees to a Recommendation that requires further work by the Consultant, the Consultant together with Fresh Direct will determine the scope and timeline for the ongoing work and that information will be shared with Class Counsel. To the extent that the work will involve the Consultant making further recommendations or proposals to Fresh Direct, the final form of those recommendations or proposals will also be shared with Class Counsel. Any further work and/or Recommendation by the Consultant shall be made within thirty (30) days after receipt of Fresh Direct's agreement to such further work and/or Recommendation.
- vi. If Fresh Direct disagrees with any portion of the Consultant's Recommendations, then Fresh Direct shall so inform the Consultant and Class

¹ For this paragraph "job related" shall mean: (i) the bearing or relationship that the criminal offense(s) for which the person was convicted may have on the person's fitness or ability to perform one or more of the job duties or responsibilities; and (ii) Fresh Direct's legitimate interest in protecting property and the safety and welfare of specific individuals or the general public.

Counsel not later than thirty (30) days after receipt of the Consultant's Recommendations, identify any disputed Recommendations, and provide its position as to those disputed Recommendations. Within thirty (30) days of Class Counsel's receipt of Fresh Direct's position concerning any disputed Recommendations, Class Counsel shall provide Fresh Direct with its responsive position. Class Counsel and Fresh Direct's counsel shall meet and confer in an effort to resolve any differences among the Parties regarding the Consultant's disputed Recommendations. If Fresh Direct determines that it requires more than thirty (30) days to determine whether it will reject any portion of the Consultant's Recommendations, Fresh Direct shall notify Class Counsel in writing of its need for additional time and such extension of time shall not be unreasonably withheld.

- vii. If the meet and confer between Class Counsel and Fresh Direct's counsel described in subparagraph vi above is unsuccessful, then the Parties shall submit their respective final positions as to the disputed Recommendations in writing to Stephen Sonnenberg, or another agreed upon mediator, on a date to be set by the mediator, who will provide a mediator's proposal (the "Mediator's Proposal") as to the disputed Recommendations. The Mediator's Proposal shall remain confidential and for purposes of settlement only, and shall not be used for any other purpose including, but not limited to, in any other proceeding. Fresh Direct and Plaintiffs agree that the costs associated with the submission of any disputes contemplated by this paragraph to the mediator shall be equally shared by Fresh Direct and Plaintiffs.
- viii. Not later than thirty (30) days after receipt of the Mediator's Proposal, Fresh Direct shall advise Class Counsel and the Mediator of those portions of the Mediator's Proposal which it agrees to adopt.
- ix. Not later than thirty (30) days after Fresh Direct advises the Consultant and Class Counsel of the portions to which Fresh Direct agrees, Fresh Direct will implement the agreed to portions of the Mediator's Proposal and the Consultant's Recommendation.
- x. To the extent Fresh Direct adopts any Recommendations made by the Consultant and/or pursuant to a Mediator's Proposal, Fresh Direct's agreement to make such changes to its background check practices and policies shall be not deemed an admission by Fresh Direct of noncompliance with any applicable federal, state or city law. Fresh Direct expressly denies any wrongdoing with respect to Plaintiffs and/or the Class Members and expressly denies that its background check practices and policies violate any federal, state or city laws. The parties further agree that the Consultant will not opine on Fresh Direct's compliance or noncompliance with any applicable federal, state or city law and that the Consultant's Recommendations will be based on the Consultant's expert opinion as to best practices.

- xi. Nothing shall preclude Fresh Direct from making changes to its practices during the processes described herein that it deems necessary to comply with applicable law and regulations.
- xii. The cost for implementing the programmatic relief provisions of this settlement shall be paid by Fresh Direct. This commitment includes, but is not limited to, the funding of Consultant, their staff, and other experts and consultants as reasonably required by the Consultant except as otherwise provided above.

C. Phase 2. Record Keeping Obligations and Implementation. For the twelve (12) month period subsequent to the completion of the evaluation process set forth above in Section 10.5(B), Fresh Direct shall keep records reflecting its compliance with its policies and practices, as established through this process. At the end of such twelve (12) month period, Fresh Direct shall provide documentation, the scope of which will be agreed upon with the Consultant in advance, to the Consultant and Class Counsel, to evidence its compliance with its obligations under this Agreement.

i. If, after reviewing the documentation, the Consultant determines that Fresh Direct has complied with its obligations, then the Consultant shall report said finding to Fresh Direct's counsel and Plaintiffs' counsel. After the Consultant reports that Fresh Direct is compliant, the Consultant's engagement under this Agreement shall terminate. Fresh Direct shall be under no further obligation to provide information or documentation to the Consultant, or otherwise seek the Consultant's input regarding its background check policies and procedures or any further changes thereto.

ii. If, after reviewing the documentation, the Consultant determines that Fresh Direct has substantively failed to comply with any of its obligations under Section 10.5(B) above, then such substantive noncompliance shall be reported to Fresh Direct's counsel and Class Counsel and the parties shall meet and confer on what further remedial action, if any, will be sought going forward.

11. RELEASE

- A. **Class Release.** By operation of the Final Approval Order, except as to such rights or claims as may be created by this Agreement, each Participating Class Member, on his or her behalf and on behalf of his or her respective, current, former and future heirs, spouses, executors, administrators, agents, and attorneys forever and fully releases the Released Parties from the Released Class Claims.
- B. **Named Plaintiffs and Declarant Release.** Contingent on final approval of the settlement, and in consideration of the Settlement Payment and Service Award described above and for other good and valuable consideration, the receipt of

which is acknowledged, Named Plaintiffs and Declarant, on behalf of themselves, their heirs, spouses, executors, administrators, successors, and assigns, agents and attorneys, hereby release and forever discharge Fresh Direct and all affiliated and related entities, parent and subsidiary entities, and its respective present and former owners, members, partners, attorneys, employees and representatives (the “Releasees”), from all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or in equity, which the Named Plaintiffs and Declarant ever had, now has, or which may arise in the future, regarding any matter arising on or before the date of the Named Plaintiffs’ and Declarant’s execution of this Agreement, including but not limited to all claims (whether known or unknown), asserted or unasserted, by the Named Plaintiffs and/or Declarant or on their behalf regarding the Named Plaintiffs and Declarant or prospective employment at or termination of employment from Fresh Direct, any contract (express or implied), any claim for equitable relief or recovery of punitive, compensatory, or other damages or monies (including claims as to taxes), attorneys’ fees, any tort, and all claims for alleged discrimination based upon age, race, color, sex, sexual orientation, marital status, religion, national origin, handicap, disability, criminal conviction history, genetic information or retaliation, including any claim, asserted or unasserted, which could arise under. This Agreement may not be cited as, and does not constitute any admission by Fresh Direct of, any violation of any such law or legal obligation.

12. COVENANT NOT TO SUE

Named Plaintiffs and Declarant promise not to file a lawsuit in any court alleging Claims, as defined in Section 1 (F) above, or participate as a party, including, but not limited to, as a class action member in any administrative or other judicial proceedings, in any forum, against the Released Parties, as defined in Section 1(KK) above, for any Released Class Claims, as defined in Section 1(F) above, and covered by the Release in Section 11(A) above. In consideration of the promises made by Defendants in this Agreement, Named Plaintiffs, and Declarant agree never to institute any suit, complaint, proceeding, grievance or action of any kind at law, in equity, or otherwise in any court of the United States, state or municipality, administrative agency, or any arbitration or other legal forum, against Defendants for any Released Class Claims, as defined in Section 1 (JJ) above, and included in the Class Release, at Section 11 A above. Named Plaintiffs, and Declarant also agree that they will not join, participate in, or consent to opt in to any actions alleging that they are similarly situated to any other employee with respect to any Released Class Claims, as defined in Section

1(JJ) above, and that each will elect to opt out of any such actions against Defendants of which he or she is involuntarily made a member or participant (except that the term “participant” does not apply to or include serving as a witness in another proceeding). If Named Plaintiffs, or Declarant are joined in any class for any Released Class Claims, they agree that they will receive no further compensation of any kind for such Released Class Claim. Named Plaintiffs, and Declarant further acknowledge and agree that the covenant not to sue is an essential and material term of this Agreement, and that no settlement could have been reached by the Parties without this term. Named Plaintiffs and Declarant affirm that they understand and acknowledge the significance and consequence of this specific term of the Agreement.

13. DENIAL OF LIABILITY

- A. Defendant has agreed to the terms of this Agreement without in any way acknowledging any fault or liability or violation of any applicable federal, state, municipal or other local law, and with the understanding that terms have been reached because this settlement will avoid further expenses and disruption of Defendant’s business due to the pendency and expense of litigation. Nothing in this Agreement, the Proposed Settlement Term Sheet executed by the Parties and dated August 26, 2021, and Programmatic Updates, nor the consummation of this Agreement, shall be deemed or used as an admission of liability, culpability, negligence or wrongdoing by Defendant or any Released Party, nor as an admission that a class should be certified for any purposes other than settlement purposes.

14. INTERPRETATION AND ENFORCEMENT

- A. **Cooperation Between the Parties; Further Acts.** The Parties shall reasonably cooperate with each other and shall use their reasonable best efforts to obtain the Court’s approval of this Agreement and all of its terms. Each Party, upon the request of any other Party, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this Agreement.
- B. **No Assignment.** Class Counsel and the Named Plaintiffs represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including but not limited to, any interest in the claims, or any related action.
- C. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter contained herein, and all prior and

contemporaneous negotiations and understandings of the Parties regarding the subject matter of the Agreement shall be deemed merged into this Agreement.

- D. Binding Effect.** This Agreement shall be binding upon the Parties; and Defendant's successors and/or assigns will be bound by this Agreement as well.
- E. Arm's Length Transaction; Materiality of Terms.** The Parties have negotiated all the terms and conditions of this Agreement at arm's length. All terms and conditions of this Agreement in the exact form set forth in this Agreement are material to this Agreement and have been relied upon by the Parties in entering into this Agreement, unless expressly stated.
- F. Captions.** The captions or headings of the Sections and the paragraphs of this Agreement have been inserted for convenience of reference only and shall have no effect upon the construction or interpretation of any part of this Agreement.
- G. Governing Law.** This Agreement shall in all respect be interpreted, enforced, and governed by and under the laws of the State of New York, without regard to choice of law principles, except to the extent that the laws of the United States and/or applicable New Jersey, Pennsylvania or Maryland law govern any matter set forth herein, in which case such federal law, or applicable New Jersey, Pennsylvania or Maryland law, respectively shall govern.
- H. Waiver, etc. to Be in Writing.** No waiver, modification, or amendment to the terms of this Agreement, whether purportedly made before or after the Court's approval of this Agreement, shall be valid or binding unless in writing, signed by or on behalf of all Parties, and then only to the extent set forth in such written waiver, modification, or amendment. Any failure by any Party to insist upon the strict performance by the other Party of any of the provisions of this Agreement shall not be deemed a waiver of future performance of the same provisions or of any of the other provisions of this Agreement and, such Party, notwithstanding such failure, shall have the right thereafter to insist upon specific performance of any and all provisions of this Agreement.
- I. When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution and approval by the Court, subject to exhaustion of any appeals from the Court's Final Approval Order. The Parties may execute this Agreement in counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.
- J. Signatures.** This Agreement is valid and binding only if signed by the Parties or their authorized representatives.

- K. Facsimile, Fax, and Email Signatures.** Any Party may execute this Agreement by signing or causing its counsel to sign on the designated signature block below and transmitting that signature page via facsimile, email, or other electronic means to counsel for the other Party. Any signature made and transmitted by facsimile, email, or other electronic means for the purposes of executing this Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding upon the Party whose counsel transmits the signature page.
- L. Construction.** The determination of the terms and conditions of this Agreement has been by mutual agreement of the Parties. Each Party participated jointly in the drafting of this Agreement, and therefore the terms and conditions of this Agreement are not intended to be, and shall not be, construed against any Party by virtue of draftsmanship.

WE AGREE TO THESE TERMS,

Plaintiffs

Corey Stewart

Corey Stewart

Dated: 04/18/2022

Vidal Soler

Vidal Soler

Dated: 08/04/2022

Defendants

DocuSigned by:
Teepoo Riaz
 1F5868346AF449B...
Fresh Direct

By: Teepoo Riaz - SVP & General Counsel

Dated: May 4, 2022 | 3:03 PM EDT