

# **EXHIBIT A**

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement” or “Settlement Agreement”), dated as of May 14, 2020, is made and entered into by and among the following Parties: (1) Village Bank, the Settlement Class Representative, for itself and on behalf of the Settlement Class, by and through Settlement Class Counsel; and (2) Caribou Coffee Company, Inc., Bruegger’s Enterprises, Inc., Einstein & Noah Corp., and Einstein Noah Restaurant Group, Inc. (collectively, “Caribou”) by and through its counsel of record, (“Caribou’s Counsel”) and subject to preliminary and final Court approval as required by Rule 23 of the Federal Rules of Civil Procedure.

### **RECITALS**

A. On June 21, 2019, Plaintiff Village Bank (“Plaintiff” or “Settlement Class Representative”) filed an action against Caribou in the United States District Court for the District of Minnesota (“Litigation”) after Caribou reported third-party criminal cyberattacks of 473 of its locations involving malware variants targeting customers’ payment card information.

B. The Class Action Complaint (“Complaint”) asserted claims of negligence, negligence per se, violations of the Minnesota Plastic Card Security Act, Minn. Stat. § 325E.64, and also sought declaratory and injunctive relief. (ECF No. 1).

C. The Parties negotiated and electronically filed on August 14, 2019 a Stipulation for Protective Order (ECF No. 19) and a Stipulation for Federal Rule of Evidence 502(d) Order (ECF No. 21).

D. On August 28, 2019, Caribou filed an Answer to Class Action Complaint (“Answer”). (ECF No. 28).

E. The Parties met and conferred and prepared a joint Rule 26(f) Report filed on October 24, 2019. (ECF No. 35).

F. The Parties engaged in early informal discovery in an effort to efficiently mediate and resolve the matter. In particular, Plaintiff requested numerous documents and Caribou produced over 800 pages of documents in response, which Plaintiff reviewed. Additionally, Plaintiff obtained and reviewed documents from third parties in response to subpoenas Plaintiff served on the major card brands.

G. Caribou requested documents from Plaintiff and Plaintiff Village Bank produced responsive documents, which Caribou reviewed.

H. This Settlement resulted from good faith, arm’s-length settlement negotiations, including a full-day mediation before the Honorable Arthur J. Boylan (Ret.). The Parties also participated in several direct discussions about the resolution of the Litigation. The Parties did not discuss attorneys’ fees, costs, and expenses prior to agreeing to the essential terms of the Settlement.

I. Class Counsel conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of the claims to be resolved in the Settlement and how best to serve the interests of the Settlement Class. Based on this investigation and the negotiations described above, Class Counsel have concluded, taking into account the sharply contested issues involved, the risks, uncertainty, and cost of further prosecution of the Litigation, and the substantial benefits to be received by the Settlement

Class pursuant to this Settlement, that a settlement with Caribou on the terms set forth in this Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class.

J. Caribou denies all material allegations of the Complaint. Caribou specifically disputes that it is liable in any way for the Data Breach (defined herein) at issue in the Complaint and denies that Plaintiff and putative class members are entitled to any relief from Caribou. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Caribou has agreed to settle the Litigation on the terms set forth in this Settlement, subject to Court approval.

K. The Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to all Released Claims. The Parties intend this Settlement to bind the Plaintiff, Caribou, and all Settlement Class Members who do not timely and validly exclude themselves from the Settlement Class.

NOW, THEREFORE, in light of the foregoing, for good and valuable consideration, the receipt of which is hereby mutually acknowledged, it is hereby stipulated and agreed by the Parties that the Litigation be settled, compromised, and dismissed on the merits and with prejudice, subject to preliminary and final Court approval as required by Federal Rule of Civil Procedure 23, on the following terms and conditions:

### **DEFINITIONS**

In addition to the terms defined at various points within this Settlement, the terms set forth in this section in boldface type will have the following meanings:

1. **Alerted on Payment Card** means any payment card (including debit and credit cards) that was identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa or MasterCard.

2. **Approved Claim** means a claim for Settlement benefits made using a Claim Form found to be valid by and in an amount approved by the Settlement Administrator.

3. **Caribou** means Caribou Coffee Company, Inc., Bruegger's Enterprises, Inc., Einstein & Noah Corp., and Einstein Noah Restaurant Group, Inc.

4. **Claims Administration** means the processing of Claim Forms received from Settlement Class Members and the payment of Approved Claims by the Settlement Administrator, as well as any other duties and obligations of the Settlement Administrator as set forth in the Settlement.

5. **Claims Deadline** means the deadline by which Settlement Class Members must submit a claim for benefits under this Settlement. The Claims Deadline shall be 120 days after the Notice Deadline.

6. **Claim Form** shall mean the claim form attached as Exhibit 5 (including an electronic version thereof), or a claim form approved by the Court that is substantially similar to Exhibit 5.

7. **Class Counsel or Settlement Class Counsel** means:

Bryan L. Bleichner  
CHESTNUT CAMBRONNE PA  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401

Karl L. Cambronne  
CHESTNUT CAMBRONNE PA  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401

8. **Complaint** means the operative Class Action Complaint (ECF No. 1), filed in the Litigation.

9. **Compromised Card(s)** means any payment card (including debit and credit cards) that was/were used to make a purchase during the period of the Data Breach at any Caribou location impacted by the Data Breach.

10. **Costs of Settlement Administration** means all actual costs associated with or arising from Claims Administration, the Notice Plan, and providing notice pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1715(b). The Costs of Settlement Administration shall be paid to the Settlement Administrator as set forth in this Settlement.

11. **Court** means the United States District Court for the District of Minnesota.

12. **Data Breach** means the third-party criminal cyberattacks of certain of Caribou’s locations involving malware variants targeting customers’ payment card information that Caribou reported in 2018, and that is the subject of the Litigation and Complaint.

13. **Defendants’ Released Persons** means (a) Caribou Coffee Company, Inc., Bruegger’s Enterprises, Inc., Einstein & Noah Corp., and Einstein Noah Restaurant Group, Inc, (b) each of its or their respective current and former parents, subsidiaries, affiliated companies, and divisions, whether indirect or direct, and (c) the respective

predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, reinsurers, shareholders, members, advisors, consultants, representatives, partners, joint venturers, and assigns of each of the entities and persons listed in sections (a) and (b) of this Paragraph.

14. **Effective Date** means the first day after which all of the following events and conditions have occurred: (a) Class Counsel and Caribou’s counsel have executed this Settlement; (b) the Court has entered the Final Approval Order and Judgment without material change to either the Parties’ Settlement or agreed-upon proposed Final Approval Order and Judgment as described in this Settlement and attached as Exhibit 2; and (c) (i) the time for seeking rehearing, appellate, or other review of the Final Approval Order and Judgment has expired with no appeal, motion for rehearing, or motion for further review being filed, except specifically as described further in this definition, or (ii) the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has expired. For purposes of the Effective Date, a “material change” includes, but is not limited to, the events set forth in Paragraph 71(a)-(e), as well as any modification to: (a) the entities included in the definition of Defendants’ Released Persons or Plaintiff’s Released Persons; (b) the definition of the Settlement Class; (c) the scope of the claims released against the Defendants’ Released Persons; (d) the scope of the claims released against Plaintiff’s Released Persons; (e) the scope of the Injunctive Relief agreed to by Caribou

as set forth in this Settlement; (f) the amount of the Settlement Fund; and/or (g) the requirements for Settlement Class Members to exclude themselves from the Settlement.

15. **Final Approval** means the date that the Court enters an order and judgment granting final approval of the Settlement and determines the amount of fees, costs, and expenses awarded to Class Counsel and the amount of the Service Award. In the event that the Court issues separate orders addressing the foregoing matters, then Final Approval means the date of the last of such orders.

16. **Final Approval Order and Judgment** means the order and judgment that the Court enters upon Final Approval and in the form of, or materially in the form of, the proposed Final Approval Order and Judgment attached as Exhibit 2. In the event that the Court issues separate orders addressing the matters constituting Final Approval, then the Final Approval Order and Judgment includes all such orders.

17. **Litigation** means the action styled *Village Bank v. Caribou Coffee Company, et al.*, Case No. 19-cv-01640-JNE-HB in the United States District Court for the District of Minnesota.

18. **Notice** means the information, substantially in the form of Exhibits 3-4, to be provided to Class Members pursuant to a Notice Plan to be approved by the Court.

19. **Notice Deadline** means the date by which the Settlement Administrator is required to send out mailed Notice, which shall be thirty (30) days after entry of the Preliminary Approval Order unless a different deadline is set by the Court.

20. **Notice Plan** means the notice program and methods provided for in this Settlement and consists of (1) a direct mail notice to Settlement Class Members; (2) a



publication notice in the ABA Banking Journal; (3) notice posted on the Settlement Website; and (4) such other notice as is required by due process and Rule 23 of the Federal Rules of Civil Procedure. The Notice Plan shall be effected in substantially the same manner provided for in this Settlement.

21. **Objection Deadline** means 60 days after the Notice Deadline.

22. **Opt-Out Deadline** means 60 days after the Notice Deadline.

23. **Parties** means Caribou and the Plaintiff individually and on behalf of the Settlement Class.

24. **Plaintiff** means the named plaintiff in the Complaint.

25. **Plaintiff's Released Persons** means Plaintiff, any current and former parents, subsidiaries, affiliated companies, and divisions and Plaintiff's counsel of record in this litigation.

26. **Preliminary Approval Order** means the order preliminarily approving the Settlement and, among other things, ordering that notice be provided to the Settlement Class, and in the form of or materially in the form of the proposed Preliminary Approval Order attached as Exhibit 6.

27. **Released Claims** has the meaning set forth in Paragraphs 62 and 63.

28. **Plaintiff Releasing Parties** means Plaintiff and all Settlement Class Members who do not timely and validly exclude themselves from the Settlement, and each of these entities' current and former parents, subsidiaries, affiliated companies, divisions, as well as these entities' successors, and assigns, and each of their respective

past and present officers, directors, shareholders, members, insurers, agents, and employees (associates).

29. **Service Award** means a payment of \$15,000 to the Plaintiff, subject to Court approval, in compensation for its involvement in this Litigation and service on behalf of other financial institutions. Any Service Award will be paid out of the Settlement Fund.

30. **Settlement Agreement or Settlement** means this settlement agreement and release, including exhibits hereto.

31. **Settlement Administrator** means the entity to be selected by Class Counsel, subject to approval of Caribou, which shall not be unreasonably withheld, and approved by the Court to effectuate the Notice Plan and Claims Administration per the terms of this Settlement.

32. **Settlement Class Members, Class Members, or Settlement Class** means all persons and entities that fall within the settlement class definition set forth in this Settlement.

33. **Settlement Class Representative** means the Plaintiff.

34. **Settlement Fund** means a non-reversionary fund in the amount of five million eight hundred sixteen thousand two hundred fifty dollars (\$5,816,250.00) to be used to pay claims of Settlement Class Members, all attorneys' fees, costs, and expenses approved by the Court, Costs of Settlement Administration, taxes, and any Service Award approved by the Court.

35. **Settlement Website** means the website that the Settlement Administrator will establish as soon as practicable following preliminary approval, but no later than the Notice Deadline, as a means for Settlement Class Members to obtain notice of and information about the Settlement, through and including hyperlinked access to this Settlement, the Notice, the order preliminarily approving this Settlement, the Claim Form, the Complaint, and such other documents as Class Counsel and Caribou agree to post or that the Court orders posted on the website. These documents shall remain on the Settlement Website at least 60 days after the Effective Date. The URL of the Settlement Website shall be agreed upon by Class Counsel and Caribou. Settlement Class Members shall also be able to submit Claim Forms electronically via the Settlement Website. The Settlement Website shall not include any advertising and shall remain operational until at least 60 days after the Effective Date.

### **SETTLEMENT CLASS**

36. For purposes of settlement only, the Parties agree that the Court should certify the following class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), defined as:

All banks, credit unions, financial institutions, and other entities in the United States (including its Territories and the District of Columbia) that issued Visa- and/or MasterCard-branded payment cards (including debit or credit cards) that were affected by the Data Breach and/or part of initial and/or final alerts from Visa or MasterCard related to the Data Breach.

37. For purposes of settlement only, Class Counsel shall seek, and Caribou shall not oppose, the appointment of Class Counsel as Settlement Class Counsel and the appointment of Plaintiff as Settlement Class Representative. Settlement Class

Representative will move for provisional certification of the Settlement Class for settlement purposes only contemporaneously with their motion for preliminary approval of the Settlement. Caribou agrees not to contest provisional certification of the Settlement Class for settlement purposes only.

### **SETTLEMENT CONSIDERATION**

38. Caribou agrees to pay a non-reversionary fund in the amount of five million eight hundred sixteen thousand two hundred fifty dollars (\$5,816,250.00) to be used to pay claims of Settlement Class Members, all attorneys' fees, costs, and expenses approved by the Court, Costs of Settlement Administration, notice, taxes, and any Service Award approved by the Court into a fund to compensate Settlement Class Members on the following terms:

- a. Caribou shall pay the Settlement Amount to an interest-bearing escrow account to be selected by Class Counsel in two phases. First, Caribou shall cause its insurance carrier to deposit four million two hundred fifty thousand dollars (\$4,250,000.00) to the escrow account within thirty (30) calendar days following the execution of the Settlement Agreement. Second, within fourteen (14) calendar days of the Effective Date, Caribou shall deposit one million five hundred sixty six thousand two hundred fifty dollars (\$1,566,250.00) to the escrow account. Class Counsel and/or the Settlement Administrator shall timely furnish to Caribou any required account information, wiring instructions, or necessary forms before the payment is made. The Settlement

Administrator shall be responsible for all administrative, accounting and tax compliance activities in connection with the Settlement Fund and the monies deposited into the Settlement Fund, including any filing necessary to obtain Qualified Settlement Fund status pursuant to Treas. Reg. § 1.468B-1. Caribou shall provide to the Settlement Administrator any documentation necessary to facilitate obtaining Qualified Settlement Fund status for the Settlement Fund pursuant to Treas. Reg. § 1.468B-1. All taxes on income or interest generated by the Settlement Fund, if any, shall be paid out of the Settlement Fund.

- b. Disbursements from the Settlement Fund will be made to (i) pay Settlement Class Members as set forth in the Distribution Plan attached hereto as Exhibit 1; (ii) pay all attorneys' fees, costs, and expenses approved by the Court; (iii) pay any Service Award approved by the Court; (iv) pay the Costs of Settlement Administration; and (v) pay any taxes due on the Settlement Fund as set forth in the Distribution Plan attached hereto as Exhibit 1. The Parties intend that, after these payments and disbursements are made, there will be no funds remaining. Nonetheless, to the extent any funds remain, no portion of the Settlement Fund will be returned to Caribou except for in the case of a Termination of the Settlement pursuant to ¶¶ 71-73. Until the Effective Date, however, no funds shall be distributed from the Settlement Fund with the exception of approved payments to the

Settlement Administrator pursuant to ¶ 58. For avoidance of doubt, in no event shall Caribou's monetary obligation under the Settlement exceed five million eight hundred sixteen thousand two hundred fifty dollars (\$5,816,250.00).

39. In partial consideration of the full settlement and release of all claims against Defendants' Released Persons, Caribou, subject to its Board approval, agrees to adopt or continue the following measures ("Measures") with respect to its locations.

- a. Caribou will continue to maintain monitoring for indicators of compromise on Caribou's computer network endpoints to the extent required by Payment Card Industry Data Security Standards ("PCI DSS"); continue to deploy anti-virus protections on Caribou's store-based IT assets to the extent required by PCI DSS; and continue to conduct regular penetration testing to the extent required by PCI DSS.
- b. Caribou will use reasonable efforts to upgrade its systems to point-to-point encryption when commercially feasible in Caribou's discretion, security training for active directory employees, and annual external audits for PCI DSS compliance by a Qualified Security Assessor ("QSA") to the extent required by PCI DSS.

40. The Measures set forth above will be materially maintained for at least two (2) years following the Effective Date, subject to any of the following: (a) a determination by a majority of the non-management directors that the Measure is no longer in the best interest of Caribou's, including, but not limited to, due to circumstances

making the Measure no longer applicable, feasible, or available on commercially reasonable terms; (b) a determination by the Caribou officer designated as the head of Caribou's cybersecurity program and approved by a majority of the members of the relevant Caribou Board committee that the Measure is no longer in the best interest of Caribou, including, but not limited to, due to circumstances making the Measure no longer applicable, feasible, or available on commercially reasonable terms; or (c) modifications which Caribou reasonably believes are required by applicable law or regulation.

### **PRELIMINARY APPROVAL**

41. Upon execution of this Settlement Agreement, Class Counsel shall move the Court for an order granting preliminary approval of this Settlement, substantially in the form of Exhibit 6, by May 15, 2020. The motion for preliminary approval shall request that the Court: (1) preliminarily approve the terms of the Settlement as within the range of fair, adequate, and reasonable; (2) provisionally certify the Settlement Class pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), for settlement purposes only; (3) approve the Settlement Administrator, Notice Plan set forth herein, the form and content of the Notice, and the Claim Form; (4) approve the procedures set forth in this Settlement for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (5) stay all proceedings in the Litigation unrelated to the Settlement pending Final Approval of the Settlement; (6) stay and/or enjoin, pending Final Approval of the Settlement, any actions brought by Settlement Class Members concerning any Released Claims; (7) appoint Class Counsel and

Settlement Class Representative; and (8) schedule a Final Approval hearing at a date that provides sufficient time for the deadlines contemplated by this Settlement and that is convenient for the Court, at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith and should be finally approved, and determine whether to approve Class Counsel's application for attorneys' fees, costs, and expenses and any Service Award ("Final Approval Hearing").

42. Within ten (10) days of the filing of the motion for preliminary approval, the Settlement Administrator shall serve or cause to be served a notice of the proposed Settlement on appropriate state and federal officials in accordance with the requirements under CAFA.

#### **SETTLEMENT ADMINISTRATOR**

43. The Settlement Administrator shall administer various aspects of the Settlement and perform such other functions as are specified for the Settlement Administrator elsewhere in this Settlement, including, but not limited to, overseeing administration of the Settlement Fund; providing Notice to Settlement Class Members as described in this Settlement; effecting the Notice Plan; establishing and operating the Settlement Website and a toll-free number; administering the claims processes; and distributing cash payments according to the processes and criteria established by this Settlement.

44. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Settlement, include:

- a. Implementing the Notice Plan required by this Settlement;



- b. Establishing and maintaining a post office box for mailed written notifications of exclusion from the Settlement Class;
- c. Establishing and maintaining the Settlement Website;
- d. Establishing and maintaining a toll-free telephone line for Settlement Class Members to call with Settlement Agreement-related inquiries, and answering the questions of Settlement Class Members who call with or otherwise communicate such inquiries;
- e. Responding to any mailed Settlement Class Member inquiries;
- f. Processing all written notifications of exclusion from the Settlement Class and providing deficiency notices as set forth herein;
- g. Providing weekly reports and, no later than seven (7) days after the Opt-Out Deadline or seven (7) days after the resolution of all opt-out deficiency notices as described in Paragraph 52, whichever is later, a final report to Class Counsel and Caribou, that summarize the number of written notifications of exclusion received that week, the total number of written notifications of exclusion received to date, and other pertinent information as requested by Class Counsel and Caribou's counsel;
- h. In advance of the Final Approval Hearing, preparing an affidavit to submit to the Court that: (i) attests to implementation of the Notice Plan in accordance with the Preliminary Approval Order; and (ii) identifies

each Settlement Class Member who timely and validly provided written notification of exclusion from the Settlement Class;

- i. Reviewing, determining the validity of, and responding to all claims submitted by Settlement Class Members, pursuant to criteria established by this Settlement Agreement;
- j. After the Effective Date, processing and transmitting distributions to Settlement Class Members that submitted Approved Claims;
- k. Providing weekly reports and a final report to Class Counsel and Caribou that summarize the number of claims since the prior reporting period, the total number of claims received to date, the number of any claims approved and denied since the prior reporting period, the total number of claims approved and denied to date, and other pertinent information as requested by Class Counsel and Caribou's counsel; and
- l. Performing any function related to Claims Administration at the agreed-upon instruction of the Parties, including, but not limited to, verifying that cash payments have been distributed in accordance with this Settlement.

45. Class Counsel shall have the right, to be exercised in their sole discretion, but not the obligation, to advise the Settlement Administrator to waive what Class Counsel reasonably deems to be formal or technical defects in any Claim Forms submitted, including, without limitation, failure to submit a Claim Form by the Claims Deadline, in the interests of achieving substantial justice.

### **NOTICE, OPT-OUTS, AND OBJECTIONS**

46. Upon preliminary approval of the Settlement, at the direction of Class Counsel, the Settlement Administrator will begin implementing the Notice Plan provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may object to the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members may access this Settlement and other related documents and information.

47. The Notice Plan has three components: (1) Mail Notice; (2) Publication Notice; and (3) Notice on the Settlement Website. The Notice Plan is to be implemented as follows:

- a. Within fourteen (14) days after entry of the Preliminary Approval Order, Class Counsel will provide, or will cause to be provided, available contact information to the Settlement Administrator for banks, credit unions, and other financial institutions that are potentially Settlement Class Members. Based upon information obtained from Class Counsel and from other reasonably available sources, the Settlement Administrator will prepare a final list of potential Settlement Class Members to which Notice will be issued.
- b. Mail Notice will be sent to those on the final list by the Notice Deadline. The Mail Notice shall consist of the long-form notice in the form

attached hereto as Exhibit 3 and Claim Form attached hereto as Exhibit 5. For any Mail Notices that are returned undeliverable with forwarding address information, the Settlement Administrator shall re-mail the Mail Notice to the updated address as indicated. For any Mail Notices that are returned undeliverable without forwarding address information, the Settlement Administrator shall use reasonable efforts to identify updated mailing addresses (such as running the mailing address through the National Change of Address Database) and re-mail the Mail Notice to the extent updated addresses are identified. The Settlement Administrator need only make one attempt to re-mail any Mail Notices that are returned as undeliverable.

- c. The Settlement Administrator will cause to be published in the digital edition of the ABA Banking Journal and/or other publications typically read by bank and credit union executives the summary notice attached hereto as Exhibit 4. The publications in which the notice will appear and the dates and frequency of the Publication Notice will be determined by the Settlement Administrator in consultation with the Parties. The Settlement Administrator may also utilize other means of Publication Notice in consultation with Parties. Caribou shall have the right to review and object to any proposed publications different from Exhibit 4 as well as the publication of Exhibit 4 in publications other

than the ABA Banking Journal. The Parties shall jointly request the Court to resolve any disputes regarding additional publication notice.

- d. The Settlement Administrator will send out at least one reminder mailing during the claims period to those Settlement Class Members that have not yet filed claims.
- e. The Settlement Administrator will establish a toll-free number to respond to inquiries from Settlement Class Members by the Notice Deadline.
- f. By the Notice Deadline, the Settlement Administrator will create and maintain the Settlement Website, which will contain the information and documents required by this Settlement. The Settlement Website will be configured so that Settlement Class Members may file claims electronically.
- g. The Parties agree to provide any additional notice that the Court determines is necessary to meet the requirements of due process or Rule 23 of the Federal Rules of Civil Procedure, the cost of which shall be deemed part of the Costs of Settlement Administration and paid from the Settlement Fund as provided for in the Settlement.

48. Pursuant to the Preliminary Approval Order, the Settlement Administrator will provide notice to Class Members in accordance with a notice plan to be approved by the Court in such Order. All costs associated with providing notice to Class Members and with administration of the Settlement will be paid from the Settlement Fund.

49. Opt Outs by Class Members:

- a. The Parties will request that the Court order procedures for Class Members to request to “opt out” (i.e., to be excluded from the Settlement Class) in accordance with the provisions in the Preliminary Approval Order. No request to opt out shall be valid unless the Class Member requests to be excluded from the settlement. Exclusion requests must be made in writing, including the Class Member’s name, address, telephone number, statement that the Class Member wants to be excluded, the name of this proceeding (*Village Bank v. Caribou Coffee Company, et al.*), and signature. A request to opt out shall be considered valid if the Class Member completes and signs the written request for exclusion in the form of Exhibit 7, or alternatively sends a letter by U.S. Mail that includes all of the information set forth in the prior sentence, and sends such completed form or letter to the Settlement Administrator at the address provided in the Notices attached as Exhibits 3–4, postmarked no more than sixty (60) days after the Notice Deadline. Each Class Member that submits a request to opt out in accordance with the previous sentence and the provisions of the Preliminary Approval Order shall be excluded from the Settlement Class. Class Members seeking to opt out will also be asked to provide the number of Alerted on Payment Cards that they issued. A Class Member may opt out on an individual basis only. “Mass” or “class” opt-outs, whether submitted by

third parties on behalf of a “mass” or “class” of Class Members or multiple Class Members where no personal statement has been signed by each individual Class Member in compliance with this Paragraph are not allowed. Each Class Member that does not submit a valid request to opt out shall remain in the Settlement Class and shall be bound by the Settlement and release provided in Paragraph 62 of this Agreement.

b. Within seven (7) days of the Opt-Out Deadline or seven (7) days after the resolution of all opt-out deficiency notices as described in Paragraph 52, whichever is later, Settlement Class Counsel shall cause the Settlement Administrator to send to Settlement Class Counsel and to Caribou’s Counsel: (i) copies of all requests to opt out; and (ii) a report identifying (a) each Class Member that submitted a request to opt out, (b) the number of Alerted on Payment Cards issued by each such Class Member, and (c) the Settlement Administrator’s determination as to the validity or invalidity of each such Class Member’s request to opt out pursuant to the provisions of Paragraph 49(a) and the Preliminary Approval Order (the “Opt-Outs Report”).

c. If Class Members who issued more than 10% (in total) of Alerted on Payment Cards opt out, Caribou may void this Settlement Agreement by notifying Class Counsel in writing within ten (10) days of receiving the final report on the number of valid exclusions referenced in Paragraphs 44(g) and 49(b).

50. With regard to the number of Alerted on Payment Cards issued by each Class Member, the Opt-Outs Report provided pursuant to Paragraph 49(b) shall reflect: (i) the number of Alerted on Payment Cards claimed by the Class Member in its request to opt out; or (ii) if the request to opt out does not indicate the number of Alerted on Payment Cards issued by such Class Member, the aggregate total number of accounts identified as having been issued by such Class Member by Visa or MasterCard. If the request to opt out does not indicate the number of Alerted on Payment Cards issued by such Class Member and the Class Member is not identified by either Visa or MasterCard as having issued any accounts, such Class Member shall be bound by the terms of the Settlement, including all releases in the Settlement.

51. The Parties will request that the Court order procedures for Settlement Class Members to object to the approval of the Settlement, the Application, or both, in accordance with the provisions in the Preliminary Approval Order.

52. In the event that a Settlement Class Member purports to provide notice of its intention to opt-out of the Settlement but fails to provide all of the information set forth above, including specifically the identification of the number of payment cards issued by the Settlement Class Member that were identified as having been at risk as a result of the Data Breach in an alert or similar document by Visa or MasterCard, the Settlement Administrator shall, within five (5) days of receiving the deficient notice, send the Settlement Class Member a deficiency notice. The deficiency notice shall inform the Settlement Class Member that its attempt to opt out is deficient, invalid, and without legal effect. The deficiency notice shall be sent by the Settlement Administrator via email and,



if email is not feasible, then by USPS Priority Express mail. The deficiency notice shall also inform the Settlement Class Member that it must re-submit to an email address to be provided by the Claims Administrator a valid notice requesting exclusion that includes all of the required information, including but not limited to the number of payment cards identified as at risk, no later than ten (10) days from the date of the deficiency notice in order for its opt out to be effective. If the Settlement Class Member fails to provide all of the required information on or before that deadline, then its attempt to opt out shall be invalid and have no legal effect, and the Settlement Class Member shall be bound by the Settlement, including the releases.

53. The Notice shall also include a procedure for Settlement Class Members to object to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, and/or the application for Service Awards. Objections to the Settlement, Class Counsel's request for attorneys' fees, costs, and expenses, and/or to the application for Service Awards must be filed electronically with the Court, or mailed to the Clerk of the Court, Class Counsel, and Caribou's counsel. For an objection to be considered by the Court, the objection must be: (a) electronically filed by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and Caribou's counsel, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline, as specified in the Notice. For an objection to be considered by the Court, the objection must also set forth:

- a. the name of the Litigation (*Village Bank v. Caribou Coffee Company, et al.*, Case No. 19-cv-01640-JNE-HB (D. Minn.));

- b. the full name of the objector and the full name, address, email address, and telephone number of the person acting on its behalf;
- c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;
- d. whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class;
- e. all grounds for the objection stated with specificity, accompanied by any legal support for the objection;
- f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorney's fees, costs, and expenses, or the application for Service Awards;
- g. the identity of all representatives (including counsel representing the objector) who will appear at the Final Approval Hearing;
- h. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

- i. the number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the counsel or the firm has made such objection, and a copy of any orders related to or ruling upon counsel's or the firm's prior such objections that were issued by the trial and appellate courts in each listed case;
- j. if the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate.
- k. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;
- l. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a

summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;

- m. a statement indicating whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and
- n. the objector's signature on the written objection (an attorney's signature is not sufficient).

54. In addition, any Settlement Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide along with its objection the dates when the objector will be available to be deposed during the period from when the objection is filed through the date five (5) days before the Final Approval Hearing.

55. Any Settlement Class Member who both objects to the Settlement Agreement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

56. The Mail Notice shall be sent or issued by the Notice Deadline, excluding any re-mails for Mail Notices that are returned undeliverable and any reminder mail notices to be sent during the claims period.

57. At least thirty-five (35) days before the Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and Caribou with one or more affidavits confirming that the Notice Plan was completed in accordance with the Parties' instructions and the Court's approval. Class Counsel shall file such affidavit(s) with the

Court as an exhibit to or in conjunction with Settlement Class Representative's motion for final approval of the Settlement Agreement.

58. The Settlement Administrator shall be paid from the Settlement Fund. Class Counsel may initially spend, without getting court approval, up to fifty-thousand dollars (\$50,000) from the Settlement Fund for purposes of class administration and giving notice to the class.

59. In the event that the Settlement is not approved or is terminated, Caribou will not be entitled to a return of any of the monies that have been paid to the Settlement Administrator for the Costs of Settlement Administration up to that point. Class Counsel and the Settlement Administrator will take reasonable steps to ensure that no further Costs of Settlement Administration are incurred thereafter without Caribou's express written approval.

#### **FINAL APPROVAL ORDER AND JUDGMENT**

60. Settlement Class Representative's motion for preliminary approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur, which shall be sufficiently far in advance to allow for the deadlines contemplated by this Settlement. The Final Approval Hearing shall be scheduled no earlier than 90 days after the CAFA notices are mailed to ensure compliance with 28 U.S.C § 1715. By no later than 30 days prior to the Final Approval Hearing, Class Counsel shall file a motion for final approval of the Settlement. Settlement Class Representative's Service Payment Request and Settlement Class Counsel's Fee Request shall be filed with the Court at least 21 days prior to the Objection

Deadline. Objectors, if any, shall file any response to Class Counsel's motions no later than 17 days prior to the Final Approval Hearing. By no later than 10 days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses, and for any Service Award shall be filed. At the Final Approval Hearing, the Court will consider the motion for final approval of the Settlement, and Class Counsel's application for attorneys' fees, costs, and expenses, and for any Service Award. In the Court's discretion, the Court also may hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who objects to the Settlement, Class Counsel's application for attorneys' fees, costs, expenses, and/or any Service Award, provided the objectors filed timely objections that meet all of the requirements listed in this Settlement.

61. At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order and Judgment granting final approval of the Settlement, and whether to approve Class Counsel's request for attorneys' fees, costs, expenses, and any Service Awards. The proposed Final Approval Order and Judgment that will be filed with the motion for final approval shall be in a form agreed upon by Class Counsel and Caribou as set forth in Exhibit 2. Such proposed Final Approval Order and Judgment shall, among other things:

- a. Determine that the Settlement is fair, adequate, and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;

- c. Determine that the notice provided satisfied Federal Rule of Civil Procedure 23 and Due Process requirements;
- d. Dismiss all claims in the Complaint and the Litigation with prejudice;
- e. Bar and enjoin the Plaintiff Releasing Parties from asserting any of the Released Claims, including during the pendency of any appeal from the Final Approval Order and Judgment;
- f. Release and forever discharge Caribou and Defendants' Released Persons from the Released Claims and release Plaintiff's Released Persons as provided in this Settlement Agreement; and
- g. Reserve the Court's continuing and exclusive jurisdiction over Caribou and all Settlement Class Members (including all objectors) to administer, supervise, construe, and enforce this Settlement in accordance with its terms.

### **RELEASES**

62. As of the Effective Date, the Settlement Class Representative and all other Settlement Class Members, on their own behalves and on behalf of their respective past and present parents, subsidiaries, affiliates, divisions, successors, predecessors, assignors, assignees, and assigns, and each of their respective past and present officers, directors, shareholders, members, insurers, agents, and employees (associates) shall be deemed to have waived any right to assert against Caribou and its present, former, and future parents, subsidiaries, affiliates, divisions, successors, predecessors, assignors, assignees, and assigns, and each of their respective present, former or future, officers,

directors, shareholders, insurers, reinsurers, employees (associates), agents, acquirers, processors, representatives, attorneys, and accountants and to have irrevocably released and forever discharged the Defendants' Released Persons from and for, any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they ever had, now have, or may claim now or in the future to have, that (i) were alleged or asserted against any of the Defendants' Released Persons in the Complaint or that could have been alleged or asserted against any of the Defendants' Released Persons in the Complaint; (ii) arise out of the same nucleus of operative facts as any of the claims alleged or asserted in the Complaint; or (iii) arise out of the Data Breach or any disclosures or notices that Caribou made or failed to make about the Data Breach ("Plaintiffs' Released Claims").

63. As of the Effective Date, Caribou shall be deemed to have waived any right to assert against Settlement Class Representative and Settlement Class Counsel and to have irrevocably released and forever discharged the Plaintiff Released Persons from and for, any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which it ever had, now has, or may claim now



or in the future to have, relating to the institution or prosecution of the Litigation (“Caribou Released Claims”).

64. For purposes of the releases set forth in Paragraphs 62 and 63 and the Final Judgment, “unknown claims” means claims that Caribou and the Plaintiff Releasing Parties do not know or suspect to exist in their favor as of the entry of the Final Judgment, which if known by them might have affected their settlement of the Complaint. It is the intention of the Parties and the Settlement Class Members that, upon the Effective Date, Caribou and each of the Plaintiff Releasing Parties shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted: (a) by section 1542 of the California Civil Code, or (b) by any law of any state or territory of the United States, federal law, or principle of common law which is similar, comparable, or equivalent to section 1542 of the California Civil Code, the provisions, rights and benefits of any statute or law which might otherwise render a general release unenforceable with respect to unknown claims.

Section 1542 of the California Civil Code reads:

Section 1542. General Release, extent. 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 settlement with the debtor or released party.

Upon the Effective Date, Caribou and each of the Plaintiff Releasing Parties shall be deemed to have acknowledged that such party is aware that such party may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Plaintiffs’ Released Claims and Caribou Released

Claims, but it is such party's intention to, and each of them shall be deemed upon the Effective Date to have, waived and fully, finally, and forever settled and released any and all Plaintiffs' Released Claims and Caribou Released Claims, whether known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

65. Upon entry of the Final Judgment, Caribou, the Settlement Class Representatives and other Settlement Class Members shall be enjoined from prosecuting any claim they have released in the preceding paragraphs in any proceeding against any of the Plaintiff Released Persons, Defendants' Released Persons or based on any actions taken by any of the Plaintiff Released Persons or Defendants' Released Persons that are authorized or required by this Agreement or by the Final Judgment. It is further agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section.

#### **ATTORNEYS' FEES, COSTS, EXPENSES AND SERVICE AWARDS**

66. Service Awards: Class Counsel will ask the Court to approve, and Caribou will not oppose, a Service Award of \$15,000 to the Class Representative's efforts in the Litigation and commitment on behalf of the Settlement Class. Any Service Award approved by the Court will be paid from the Settlement Fund. Neither Class Counsel's application for, nor any individual's entitlement to, a Service Award shall be conditioned in any way upon such individual's support for this Settlement.

67. Attorneys' Fees, Costs, and Expenses: Class Counsel will request a percentage of the gross Settlement Fund, including any interest earned thereon, from the Court for their attorneys' fees and will additionally request reimbursement of their reasonable costs and expenses from the Settlement Fund. For the avoidance of doubt, all attorneys' fees (including any interest earned thereon), costs, and expenses, and Service Award approved by the Court shall be paid from the Settlement Fund.

68. Within thirty (30) calendar days of the Effective Date, the Settlement Administrator shall wire Court-approved attorneys' fees, costs, and expenses and any Service Award into an account designated by Class Counsel.

69. Class Counsel, in their sole discretion, shall allocate and distribute the amount of attorneys' fees and costs and expenses awarded by the Court among Plaintiffs' counsel of record.

70. In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, costs, and expenses and/or Service Awards in the amounts requested by Class Counsel, the remaining provisions of this Settlement shall remain in full force and effect. No order of the Court, or modification or reversal or appeal of any order of the Court, concerning solely the amount(s) of attorneys' fees, costs, and expenses and/or Service Awards shall constitute grounds for cancellation or termination of this Settlement.

### **TERMINATION**

71. This Settlement Agreement shall be terminated after (14) days (or such longer time as may be agreed between Class Counsel and Caribou) after any of the

following occurrences unless otherwise agreed to by Settlement Class Representative and Caribou:

- a. Class Counsel and Caribou agree to termination before the Effective Date;
- b. The Court rejects, materially modifies, materially amends or changes, or declines to preliminarily or finally approve, the Settlement;
- c. An appellate court reverses the Final Approval Order and Judgment, and the Settlement is not reinstated and finally approved without material change by the Court on remand;
- d. The Court or any reviewing appellate court incorporates material terms or provisions into, or deletes or strikes material terms or provisions from, or materially modifies, amends, or changes, the proposed Preliminary Approval Order, the Preliminary Approval Order, the proposed Final Approval Order and Judgment, the Final Approval Order and Judgment, or the Settlement;
- e. Caribou notifies Class Counsel of its intent to void the Settlement pursuant to Paragraph 49(c); or
- f. The Effective Date does not occur.

72. In the event of a termination as provided for in the Settlement, the Settlement shall be considered null and void; all of the Parties' obligations under the Settlement shall cease to be of any force and effect and the Parties shall return to the status quo ante in the Litigation as if the Parties had not entered into this Settlement. In

addition, in the event of such a termination, all of the Parties' respective pre-Settlement claims and defenses will be preserved, including all defenses to class certification.

73. In the event of a termination as provided for in the Settlement, all funds remaining in the Settlement Fund as of the termination date (including any interest that has accrued), less any bills outstanding for the Settlement Administrator for approved costs under Paragraph 58, shall be returned to Caribou by the Settlement Administrator within thirty (30) calendar days of the date on which the termination occurs.

#### **NO ADMISSION OF LIABILITY**

74. Caribou disputes the claims alleged in the Litigation and does not by this Settlement or otherwise admit any liability or wrongdoing of any kind. Caribou has agreed to enter into this Settlement solely to avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation, and to be completely free of any further claims that were asserted or could have been asserted in the Litigation.

75. Class Counsel and Settlement Class Representatives believe that the claims asserted in the Litigation have merit, and they have examined and considered the benefits to be obtained under the Settlement, the risks associated with the continued prosecution of this complex, costly, and time-consuming Litigation, and the likelihood of success on the merits of the Litigation. Class Counsel and Settlement Class Representatives have concluded that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Settlement Class Members.

76. The Parties understand and acknowledge that this Settlement constitutes a compromise and settlement of disputed claims. No action taken by the Parties either

previously or in connection with the negotiations or proceedings connected with this Settlement shall be deemed or construed to be an admission of the truth or falsity of any claims or defenses heretofore made, or an acknowledgment or admission by any party of any fault, liability, or wrongdoing of any kind whatsoever.

77. Neither the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any claim made by Plaintiff or Settlement Class Members, or of any wrongdoing or liability of the Defendants' Released Persons; or (b) 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 Defendants' Released Persons, in the Litigation or in any proceeding in any court, administrative agency, or other tribunal.

#### **MISCELLANEOUS**

78. In no event shall the total amount of Approved Claims, attorneys' fees, costs, and expenses, any Service Award, Costs of Settlement Administration, taxes, and any other fees, costs, expenses, payments, or any other obligations incurred by Caribou under this Settlement exceed the Settlement Fund.

79. Plaintiff's counsel and the Parties agree that they will not make the Settlement public until the Settlement Agreement is filed with the Court for preliminary approval. Neither Party will issue a press release or respond to media inquiries about this Litigation or the Settlement until such time that the Court has held a Final Approval hearing. Plaintiff's counsel and Caribou will work together in good faith to jointly agree to any public statements including responding to any inquiries from the media concerning

the Litigation. The limitations in this Paragraph 79 shall not apply to: (1) communications between Plaintiff's counsel and their clients (including Settlement Class Members); (2) any SEC or other contractual or legal disclosure obligations that Caribou may have; (3) Caribou's communications with its employees, its acquiring bank, or the payment card brands; (4) the ability of the Parties to communicate with the payment card brands about the Settlement, in order to facilitate notice to the class, as provided in the Settlement Agreement; (5) the ability of Caribou to notify its insurers about the Settlement; and (6) the ability of the Parties to communicate with necessary third parties for the purpose of facilitating the administration of the Settlement.

80. Class Counsel, subject to Caribou's approval which shall not be unreasonably withheld, shall select the Settlement Fund escrow account and the Settlement Fund escrow bank. The Settlement Fund escrow bank shall invest the Settlement Fund exclusively in an interest-bearing account or accounts where the principal will not decrease and is fully insured by the United States Government or an agency thereof, including certificates of deposit, a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and credit of the United States Government. The Settlement Fund escrow bank shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Caribou shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Settlement Fund escrow bank. For avoidance of doubt, Caribou's obligation to the Settlement Class to pay each portion of the Settlement Fund as described

in Paragraph 38 is satisfied once Caribou or its insurer transfers each payment to the escrow bank, and any decrease in the principal of the Settlement Fund for any reason after payment is received by the escrow bank shall not affect the validity of the release in Paragraph 62.

81. As used in this Settlement, all references to the plural shall also mean the singular and all references to the singular shall also mean the plural whenever the context so indicates.

82. This Settlement shall be binding upon, and inure to the benefit of, the successors and assigns of the Releasing Parties and the Defendants' Released Persons.

83. Other than at Class Counsel's request, Caribou shall not communicate with any Settlement Class Member during the pendency of the settlement approval process regarding this Litigation, the decision to opt-out, or relief being awarded in the Settlement, and represents that it has not previously so communicated with any Settlement Class Members regarding these topics. For purposes of clarity, this provision restricts only communications regarding the Litigation and/or Settlement; it does not purport to limit any other communications. This paragraph does not limit Caribou's communications with any financial institution (including Caribou's acquiring bank) with which Caribou has a business relationship.

84. The Parties to this Settlement agree to cooperate in good faith to prepare and execute all documents, to seek Court approval, defend Court approval, and to do all things reasonably necessary to complete and effectuate the settlement described in this



Settlement. Nothing in this provision is intended to limit any Party's right to terminate the Settlement in accordance with its terms.

85. Before filing any motion in the Court raising a dispute arising out of or related to this Settlement, the Parties shall consult with each other and certify to the Court that they have consulted in good faith.

86. This Settlement (along with any attached Exhibits) constitutes a single, integrated written contract expressing the entire agreement of the Parties relative to the subject matter hereof and supersede any prior agreements between the Parties, including but not limited to the Memorandum of Understanding executed between the Parties. Once this Settlement Agreement is executed, the Memorandum of Understanding shall be null and void. No covenants, agreements, representations, or warranties of any kind whatsoever have been made by any Party hereto, except as provided for herein.

87. Any inconsistency between the headings used in this Settlement and the text of the paragraphs of this Settlement shall be resolved in favor of the text.

88. The Settlement shall be construed in accordance with, and be governed by, the laws of the State of Minnesota, without regard to the principles thereof regarding choice of law.

89. This Settlement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, even though all signatories do not sign the same counterparts. Original signatures are not required. Any signature submitted by facsimile or through email of an Adobe PDF shall be deemed an original.

90. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Settlement, and shall have exclusive jurisdiction over any suit, action, proceeding or dispute arising out of or relating to this Settlement that cannot be resolved by negotiation and agreement by counsel for the Parties. The Court shall retain jurisdiction with respect to the administration, consummation, and enforcement of Settlement and shall retain jurisdiction for the purpose of enforcing all terms of the Settlement. The Court shall also retain jurisdiction over all questions and/or disputes related to the Notice Plan and the Settlement Administration. As part of its agreement to render services in connection with this Settlement Agreement, the Settlement Administrator shall consent to the jurisdiction of the Court for this purpose.

91. All notices to Class Counsel provided for herein, shall be sent by overnight mail or email to:

Bryan L. Bleichner  
CHESTNUT CAMBRONNE PA  
100 Washington Avenue South, Suite 1700  
Minneapolis, MN 55401  
bbleichner@chesnutcambronne.com

All notices to Caribou provided for herein, shall be sent by overnight mail or email to:

James Slater  
Sam Camardo  
Key Tower  
127 Public Square, Suite 2000  
Cleveland, OH 44114-1214  
jslater@bakerlaw.com  
scamardo@bakerlaw.com

Erin L. Hoffman  
Faegre Drinker Biddle & Reath LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
erin.hoffman@faegredrinker.com

The notice recipients and addresses designated above may be changed by written notice.

Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of objections, requests for exclusion, or other filings received as a result of the Notice Plan.

92. Any person executing this Settlement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Settlement to all of the terms and provisions of this Settlement.

93. This Settlement shall be deemed to have been drafted by the Parties, and any rule that a document shall be interpreted against the drafter shall not apply to this Settlement.

94. The Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

95. All dollar amounts are in United States dollars (USD).

*Signature pages follow.*

**Village Bank**

By: Aecsha Webb  
Name: [Signature]  
Title: President  
Date: May 15<sup>th</sup> 2020

**Caribou Coffee Company, Inc.**

By: Michael W. Davis  
Michael W. Davis (May 14, 2020 13:15 MDT)  
Name: Michael W. Davis  
Senior Vice President, General Counsel & Secretary  
Title: \_\_\_\_\_  
Date: May 14, 2020

**Bruegger's Enterprises, Inc.**

By: Michael W. Davis  
Michael W. Davis (May 14, 2020 13:15 MDT)  
Name: Michael W. Davis  
Senior Vice President, General Counsel & Secretary  
Title: \_\_\_\_\_  
Date: May 14, 2020

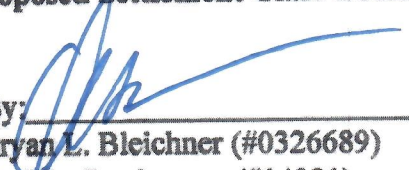
**Einstein & Noah Corp.**

By: Michael W. Davis  
Michael W. Davis (May 14, 2020 13:15 MDT)  
Name: Michael W. Davis  
Senior Vice President, General Counsel & Secretary  
Title: \_\_\_\_\_  
Date: May 14, 2020

**Einstein Noah Restaurant Group, Inc.**

By: Michael W. Davis  
Michael W. Davis (May 14, 2020 13:15 MDT)  
Name: Michael W. Davis  
Senior Vice President, General Counsel & Secretary  
Title: \_\_\_\_\_  
Date: May 14, 2020

**Proposed Settlement Class Counsel**

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*Attorneys for Plaintiff and the  
Proposed Class*

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*Attorneys for Defendants*