

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JAMI ZUCCHERO, individually, and on  
behalf of all others similarly situated,

Plaintiff,

vs.

HEIRLOOM ROSES, INC.,

Defendant.

**Case No. 22-cv-00068-KAW**

**CLASS SETTLEMENT AGREEMENT AND RELEASE**

This Class Settlement Agreement and Release (“Class Settlement Agreement”) is made and entered into by and among the following Settling Parties as defined below: (a) Plaintiff Jami Zucchero (“Representative Plaintiff”), individually and on behalf of the Settlement Class (as defined below), by and through her counsel Scott Edward Cole, Laura Van Note and Cody Alexander Bolce of Cole & Van Note (“Representative Plaintiff’s Counsel”) and (b) Defendant Heirloom Roses, Inc. (“Defendant” or “Heirloom”), by and through its counsel, Spencer Persson and Jean M. Fundakowski of Davis Wright Tremaine LLP (“Defendant’s Counsel”). The Class Settlement Agreement is subject to Court approval and is intended by the Settling Parties to resolve, discharge and settle the Released Claims (as defined below), upon and subject to the terms and conditions hereof fully, finally and forever.

This Class Settlement Agreement relates to a data security incident that occurred at Heirloom between approximately February 2021 and October of 2021 (the “Data Security Incident”).

Representative Plaintiff, individually and on behalf of putative classes, filed an action against Defendant in United States District Court for the Northern District of California (*Jami*

*Zuccherro v. Heirloom Roses, Inc.*, Case No. 4:22-cv-00068-KAW) (the “Litigation”) asserting various claims concerning the Data Security Incident.

On April 24, 2023, the Settling Parties engaged in an all-day, arms-length mediation before John Bates of JAMS, which ultimately resulted in a settlement in principle.

Pursuant to the terms agreed to and set out below, this Class Settlement Agreement resolves all actions, proceedings and claims against Heirloom and the Released Parties that are asserted in, arise from or relate to Plaintiff’s Complaint or First Amended Complaint filed in the Litigation, as well as all other actions or claims by and on behalf of individuals or putative classes arising from the Data Security Incident or matters referenced in the Complaint or First Amended Complaint.

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

Representative Plaintiff believes the claims asserted in the Litigation, as set forth in the First Amended Complaint filed in the Litigation, have merit. Representative Plaintiff and Representative Plaintiff’s Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Litigation against Heirloom and the Released Parties through motion practice, trial and potential appeals. They have also considered the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. In addition, Defendant contends Plaintiff will face insurmountable difficulties in certifying a class, proving liability and causation (particularly with respect to Heirloom’s customers, who merely utilized Heirloom’s services) and establishing compensable damages on a class-wide basis. While Representative Plaintiff’s Counsel believe Representative Plaintiff would prevail on class certification and liability, they nevertheless acknowledge the risks involved in litigation and believe settlement is in the best interests of the Settlement Class. They have

determined the settlement set forth in this Class Settlement Agreement is fair, reasonable and adequate and in the best interests of Plaintiff and the Settlement Class.

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

Defendant denies each and all of the claims and contentions alleged against it in the Litigation and believes its defenses have merit. Defendant denies all charges of wrongdoing or liability as alleged or which could be alleged in the Litigation, or that it violated or breached any law, regulation or duty owed to the proposed Settlement Class. Indeed, the Court already dismissed Plaintiff's breach of confidence, invasion of privacy, Unfair Competition Law, and unjust enrichment claims, but with the negligence, breach of implied contract, and breach of the implied covenant of good faith and fair dealing claims moving forward. Defendant further denies any individual suffered any actual harm in connection with the Data Security Incident, and the Court found that standing existed solely "in the form of [Plaintiff's] lost time from dealing with the data breach." Defendant also believes it would not be possible or feasible to certify a class for trial purposes as opposed to for settlement purposes. Nonetheless, Defendant has concluded further conduct of the Litigation would be protracted and expensive and that it is desirable the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement. Defendant also considered the uncertainty and risks inherent in any litigation. Defendant has determined it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Class Settlement Agreement.

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

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Representative Plaintiff, individually and on behalf of the Settlement Class, and Defendant that, subject to approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled and released, except as to those Settlement Class Members who timely opt

out of the Class Settlement Agreement, upon and subject to the terms and conditions of this Class Settlement Agreement, as follows:

**1. DEFINITIONS**

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

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

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

**1.3** “Approved Claims” means valid Settlement Claims approved by the Claims Administrator or found to be valid, as set forth below.

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

**1.5** “Award” means the amount remitted by the Claims Administrator out of the Settlement Fund to Settlement Class Members, as provided in Paragraphs 2 and 7 of this Class Settlement Agreement.

**1.6** “Claims Administration” means the processing of Settlement Claims received from Settlement Class Members and the processing of payment of Approved Claims by the Claims Administrator.

**1.7** “Claims Administrator” means CPT Group, a company experienced in administering class action claims generally and specifically of the type provided for in this

Litigation, as may be jointly agreed upon by the Settling Parties and approved by the Court. The Claims Administrator may be replaced upon agreement of the Settling Parties or as directed by the Court.

**1.8** “Claims Filing Deadline” means the deadline by which Settlement Class Members must submit any valid Settlement Claims. The Claims Filing Deadline shall be set by the Court in the Preliminary Approval Order. The Settling Parties propose a Claims Filing Deadline that is 90 days after the Notice Deadline.

**1.9** “Claim Form” means the claim form attached hereto as **Exhibit A**, or a claim form approved by the Court that is substantially similar to **Exhibit A**, that Settlement Class Members must submit to be eligible for relief under the terms of the Class Settlement Agreement.

**1.10** “Claims Period” means the time for Settlement Class Members to submit Settlement Claims, running from the date of entry of the Preliminary Approval Order through the Claims Filing Deadline.

**1.11** “Class Notice” means the notice of settlement that is contemplated by this Class Settlement Agreement and which shall include the Long Notice and Summary Notice, substantially in the forms attached hereto as **Exhibits B** and **C**, respectively, as approved by the Court.

**1.12** “Data Security Incident” means the data security incident that occurred between approximately February to October of 2021 and that Heirloom discovered and disclosed to potentially impacted individuals in late 2021 and early 2022, as alleged in the First Amended Complaint filed by Representative Plaintiff, whereby unauthorized hackers allegedly placed malicious code on Defendant’s Website, allowing them to access names and payment card information belonging to Class Members.

**1.13** “Effective Date” means the date by which all of the events and conditions specified in Paragraphs 1.15 and 10 below for the Final Approval Order to become Final have occurred or have been met. The Effective Date shall not be altered in the event the Court declines to approve, in whole or in part, the Attorneys’ Fees and Expenses Award or the Service Award. Further, the Effective Date shall not be altered if an appeal is filed with the sole issue(s) on appeal being the Attorneys’ Fees and Expenses Award and/or the Service Award.

**1.14** “Final” means the occurrence of all of the following events: (a) the settlement pursuant to this Class Settlement Agreement is approved by the Court; (b) the Court has entered a Final Approval Order and Judgment (as those terms are defined herein); and (c) the time to appeal or seek permission to appeal from the Final Approval Order and Judgment has expired or, if appealed, the appeal has been dismissed in its entirety, or the Final Approval Order and Judgment have been affirmed in their entirety by the court of last resort to which such appeal may be taken and such dismissal or affirmance has become no longer subject to further appeal or review. Notwithstanding the above, any order modifying or reversing any attorneys’ fees award or Service Award made in this case shall not affect whether the Judgment is “Final” as defined herein or any other aspect of the Judgment.

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

**1.16** “Final Approval Order” means the Court’s Final Approval Order which, among other things, approves this Class Settlement Agreement as fair, adequate and reasonable, enters the Judgment and confirms the final certification of the Settlement Class, substantially in the form attached hereto as **Exhibit E**.

**1.17** “Funding Date” means the date which is no later than 30 days after the later of the Effective Date or the date which the Claims Administrator provides Heirloom the Payment Instructions.

**1.18** “Judgment” means a final judgment ordering and affirming the release set forth in Section 8 of this Class Settlement Agreement of the Released Claims against the Released Parties.

**1.19** “Litigation” means *Jami Zuccherro v. Heirloom Roses, Inc.*, Case No. 4:22-cv-00068-KAW (Northern District of California).

**1.20** “Notice Program” means the notice program described in Paragraph 4.

**1.21** “Objection Deadline” means 75 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

**1.22** “Opt-Out” means a Settlement Class Member (a) who timely submits a properly completed and executed Request for Exclusion, (b) who does not rescind that Request for Exclusion before the Opt-Out Deadline, and (c) as to which there is not a successful challenge to the Request for Exclusion.

**1.23** “Opt-Out Deadline” means the date by which Settlement Class Members must mail or submit through the settlement website their Request for Exclusion in order for it to be effective. The postmark date shall constitute evidence of the date of mailing for these purposes. The Opt-Out Deadline shall be 75 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

**1.24** “Out-of-Pocket Expenses” means the following types of expenses actually incurred as demonstrated through documentation and that are fairly traceable to the Data Security Incident: (a) out-of-pocket expenses incurred as result of the Incident, including unreimbursed charges, unreimbursed card reissuance fees or any other unreimbursed charges from the debit or credit card

issuer relating to the incident and which occurred before December 31, 2021, and (b) the cost of purchasing credit monitoring or other identity theft insurance products purchased between February 1, 2021, and December 16, 2021.

**1.25** “Payment Instructions” means: (a) written directions from the Claims Administrator for the payment of any amount, which shall specify for any wire transfer payment the routing, account number, bank name and address and any other pertinent details required for the transfer. The Payment Instructions shall be confirmed by voice phone call by the Claims Administrator and must be approved by Settlement Class Counsel in writing.

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

**1.27** “Personal Information” means information that may have been exposed, compromised or accessed during the Data Security Incident, including names and payment card information.

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

**1.29** “Released Claims” means any and all claims, causes of action of every kind and description, liabilities, rights, demands, suits, matters, obligations and damages (including consequential damages, losses or costs, liquidated damages, statutory damages, punitive damages,



attorneys' fees and costs), whether known or unknown (including Unknown Claims) and whether in law or in equity, that the Settlement Class Members (and the respective heirs, administrators, representatives, attorneys, agents, officers, directors, employees, parents, subsidiaries, administrators, partners, predecessors, successors, assigns, subrogees, insurers, co-insurers, reinsurers and insurance brokers of each of Plaintiff, Settlement Class Counsel and the Settlement Class Members and all other legal or natural persons who may claim by, through or under them who have not excluded themselves from the Settlement Class) had, have or may have against Heirloom or the Released Parties that result from, arise out of, are based upon, or relate to the Data Security Incident. For the avoidance of doubt, Released Claims include all claims asserted or that could have been asserted in the Litigation or any other suit or pleading in any other court or forum arising out of, based upon or related in any way to the Data Security Incident, including without limitations any claims (including common law and statutory claims), actions, causes of action, demands, damages, penalties, losses, or remedies relating to, based upon, resulting from, or arising out of (a) the alleged theft, exposure or disclosure of Settlement Class Members' Personal Information, (b) the maintenance and storage of Settlement Class Members' Personal Information, (c) Heirloom's information security policies and practices and /or (d) Heirloom's notice or alleged lack of timely notice of the Data Security Incident to Settlement Class Members. "Released Claims" does not include the right of any Settlement Class Member or any of the Released Parties to enforce the terms of the Class Settlement Agreement and shall not include any claims of Settlement Class Members who have timely excluded themselves from the Settlement Class.

**1.30** "Released Parties" means (a) Heirloom and (b) its past or present owners, parents, subsidiaries, divisions and related or affiliated entities of any nature whatsoever, whether direct or indirect, predecessors, successors, directors, officers, members, shareholders, employees, servants,

representatives, principals, agents, advisors, consultants, vendors, partners, contractors, attorneys, insurers, reinsurers, subrogees and includes any Person related to any such entities who is, was or could have been named as a defendant in the Litigation, other than any third-party individual other than Defendant who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding or abetting the criminal activity occurrence of the Data Security Incident or who pleads *nolo contendere* to any such charge. The Settling Parties expressly acknowledge that all Released Parties are intended beneficiaries of this Class Settlement Agreement.

**1.31** “Representative Plaintiff” means Plaintiff Jami Zucchero.

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

**1.33** “Service Award” means such funds as may be awarded by the Court to Representative Plaintiff for her service as Representative Plaintiff.

**1.34** “Settlement Class” means all individuals within the United States whose name and personal payment card information was potentially exposed to unauthorized third-parties as a result of the Data Security Incident that occurred between approximately February to October of 2021. Excluded from the Settlement Class is any judge presiding over the Litigation and their first-degree relatives, judicial staff and persons who timely and validly request exclusion from the Settlement Class.

**1.35** “Settlement Class Counsel” means: Scott Edward Cole, Laura Van Note and Cody Alexander Bolce of Cole & Van Note.

**1.36** “Settlement Class Member(s)” means a member(s) of the Settlement Class. There are approximately 52,206 Settlement Class Members.

**1.37** “Settlement Costs” means all costs of the settlement including the costs of carrying out the Notice Program, as set forth in Paragraph 4.

**1.38** “Settling Parties” means, collectively, Heirloom and Representative Plaintiff, individually and on behalf of the Settlement Class.

**1.39** “Heirloom” means Defendant Heirloom Roses, Inc.

**1.40** “Unauthorized Activity Period” means the time from and including February 1, 2021, through and including the Claims Filing Deadline.

**1.41** “Unknown Claims” means any of the Released Claims that Representative Plaintiff does not know or suspect to exist in her favor at the time of the release of the Released Parties that, if known by her, might have affected her settlement with and release of the Released Parties or might have affected her decision to participate in this Class Settlement Agreement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, Representative Plaintiff expressly, by operation of the Final Approval Order, shall have

released any and all Released Claims including Unknown Claims and waived the provisions, rights and benefits conferred by California Civil Code § 1542 and also any and all provisions, rights and benefits conferred by any law of any state, province, or territory of the United States which is similar, comparable or equivalent to California Civil Code § 1542, which provides:

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

Representative Plaintiff may hereafter discover facts in addition to or different from those she now knows or believes to be true with respect to the subject matter of the Released Claims. But Representative Plaintiff expressly, by operation of the Final Approval Order, shall have upon the Effective Date fully, finally and forever settled and released any and all Released Claims, including Unknown Claims. Settlement Class Members other than Representative Plaintiff shall only be deemed to have released those claims asserted in the Complaint or which could have been asserted in the Complaint.

**1.42** All time periods described in terms of “days” shall be in calendar days unless otherwise expressly stated.

## **2. SETTLEMENT CONSIDERATION**

**2.1** In consideration for the releases contained in this Class Settlement Agreement and as a direct result of the Litigation and without admitting liability for any of the alleged acts or

omissions alleged in the Litigation and in the interests of minimizing the costs inherent in any litigation, Heirloom will perform all of the following:

**2.2** Within twenty (20) business days following entry of the Preliminary Approval Order and receipt of Payment Instructions, Heirloom will pay and advance the amounts reasonably necessary to pay for the Notice Program and settlement administration. Within twenty (20) days of the Effective Date and following receipt of a W-9 from both Settlement Class Counsel and Representative Plaintiff, Heirloom shall deliver to Settlement Class Counsel the attorneys' fees and costs and service award. Within thirty (30) days of the Effective Date, Heirloom will deliver to the Claims Administrator the Award amounts due pursuant to the claims process. This amount shall be determined and requested by the Claims Administrator and approved by Settlement Class Counsel and Heirloom's Counsel.

**2.3** Under no circumstances will Defendant or any of the Released Parties be required to make any other payments under this Settlement Agreement or otherwise in consideration of the releases set forth herein except for attorneys' fees and costs to Settlement Class Counsel, a Service Award to Representative Plaintiff as awarded/approved by the Court and payment to the Settlement Administrator.

**2.4** Each Settlement Class Member who files a valid claim will be eligible for one cash payment. If more than one valid claim is submitted, the largest valid claim filed will be processed and the remaining claims will be denied as duplicative.

**2.5** Settlement Class Members may make a Settlement Claim for compensation for up to \$200 in ordinary losses, including up to two hours of lost time at \$20 per hour.

**2.5.1** *Reimbursement Award.* A Settlement Class Member who actually incurred unreimbursed, unauthorized or fraudulent charges or out-of-pocket expenses proximately caused

by the Data Security Incident and submits a valid claim for a Reimbursement Award shall be eligible to receive a Reimbursement Award consisting of reimbursement of up to \$200. In assessing what qualifies as “proximately caused,” the Claims Administrator shall consider (a) whether the timing of the expenses occurred during the Unauthorized Activity Period and (b) any other information provided by the Settlement Class Member supporting that reimbursement is appropriate in accordance with the terms of this Agreement, including the last four digits and expiration date of the card used for the transaction such that the Claims Administrator can verify against information in Heirloom Roses’ possession.

**2.6** Settlement Class Members seeking an award under this Agreement must complete and submit a written Claim Form to the Claims Administrator, postmarked or submitted electronically on or before the Claims Filing Deadline. The Claim Form must (a) be signed by the Settlement Class Member with a statement that his or her claim is true and correct to the best of his or her belief and (b) provide appropriate documentation where required by the Claim Form. Failure to provide supporting documentation as requested as set forth in ¶ 2.6 or as requested on the Claim Form or by the Claims Administrator shall result in denial of a Settlement Claim.

**2.7** *Additional Information Required for a Reimbursement Award of Out-of-Pocket Expenses.* A Settlement Class Member seeking a Reimbursement Award for Out-of-Pocket Expenses must provide: (a) documentation sufficient to show unauthorized charges or other losses experienced during the Unauthorized Activity Period that were not reimbursed or denied and all claimed losses from such charges; (b) documentation that enables the Claims Administrator to determine that the Out-of-Pocket Expenses were fairly traceable to the Data Security Incident and; (c) and documentation showing that the Settlement Class Member made reasonable efforts to avoid or seek reimbursement for the loss, including from the applicable bank or payment card servicer

and through exhaustion of any available credit monitoring insurance and identity theft insurance, but has been unsuccessful.

**2.8 Security Enhancements:** Defendant has made and/or will make the following enhancements: (a) requiring all third-party vendors and users to utilize strong passwords and two-factor authentication to gain access to the platform; (b) requiring all third-party vendors and users to undergo regular security awareness training to keep apprised of the latest security threats, vulnerabilities and best practices; (c) sensitive data such as personal information and financial data will be protected using encryption, access control and data masking techniques; and (d) migration to the Shopify platform, which provides built-in security features such as SSL encryption, PCI compliance and secure payment processing. Shopify also provides built-in logging and monitoring features to detect and prevent unauthorized access and suspicious activities, and robust incident response and disaster recovery plans to minimize the impact of any future security breaches or disasters.

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

**3.1** As soon as practicable after the execution of the Class Settlement Agreement, Settlement Class Counsel shall file a motion seeking entry of a Preliminary Approval Order (“Motion for Preliminary Approval”). A proposed Preliminary Approval Order shall be submitted with the Motion for Preliminary Approval and shall be substantially in the form set forth in **Exhibit D**. The Motion for Preliminary Approval shall request that the Court, *inter alia*:

- a) Stay all proceedings in the Litigation other than those related to approval of the Class Settlement Agreement;
- b) Stay and/or enjoin, pending Final Approval of the Class Settlement Agreement, any actions brought by Settlement Class Members concerning the Released Claims;

- c) Preliminarily certify the Settlement Class for settlement purposes only;
- d) Preliminarily approve the terms of the Class Settlement Agreement as fair, adequate and reasonable;
- e) Appoint Representative Plaintiff as the Settlement Class representative for settlement purposes only;
- f) Appoint Settlement Class Counsel as counsel for the Settlement Class for settlement purposes only;
- g) Approve the notice program, as set forth in Paragraph 4 herein, and set the dates for the Claims Filing Deadline, Opt-Out Deadline and Objection Deadline;
- h) Approve the form and contents of a long-form notice (“Long Notice”) to be posted on the settlement website substantially similar to the one attached hereto as **Exhibit B** and a Summary Notice to be sent via Email to Settlement Class Members (“Summary Notice”), substantially similar to the one attached hereto as **Exhibit C**, which together shall include a fair summary of the Settling Parties’ respective litigation positions, the general terms of the settlement set forth in the Class Settlement Agreement, instructions for how to object to or submit a Request for Exclusion from the settlement, the process and instructions for filing a Claim Form and the date, time and place of the Final Approval Hearing;
- i) Approve a Claim Form substantially similar to that attached hereto as **Exhibit A**;
- j) Appoint a Claims Administrator;



- k) Set deadlines for objections, requests for exclusion, a Motion for Final Approval and briefing in support of final approval by the Settling Parties; and
- l) Schedule the Final Approval Hearing on a date at least 100 days from the date of the Preliminary Approval Order.

**3.2** Defendant will not object to the entry of the Preliminary Approval Order so long as it is substantially in the form attached to this Class Settlement Agreement as **Exhibit D** and is otherwise consistent with this Class Settlement Agreement, and Defendant has had the opportunity to review the Preliminary Approval Papers in advance of filing and approved those papers.

**3.3** Settlement Class Counsel and Heirloom shall request the Court hold a Final Approval Hearing after notice is completed and at least 30 days after the Opt-Out Deadline and Objection Deadline and at least 100 days after the date of the Preliminary Approval Order.

**3.4** Settlement Class Counsel and Representative Plaintiff shall move for final approval on or before the deadline set by the Court. Settlement Class Counsel shall circulate the final approval motion in advance of filing and the motion will note whether Defendant objects to any portion of the motion for final approval. To the extent Defendant objects, it may file a brief explaining its objections. The Parties may also respond to any objections by the deadline set by the Court.

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

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

- c) Determine the Notice Program satisfies Rule 23 and due process requirements;
- d) Bar and enjoin any Settlement Class Members who did not timely opt out in accordance with the requirements of this Class Settlement Agreement from asserting any of the Released Claims; and
- e) Release and forever discharge Heirloom and the Released Parties from the Released Claims, as provided for in this Class Settlement Agreement.

#### 4. **NOTICE PROGRAM**

4.1 Within ten days of the filing of the Motion for Preliminary Approval or such earlier time as this Class Settlement Agreement is filed with the Court, the Claims Administrator shall serve a letter and accompanying materials to be provided by Defendant's Counsel on the Attorney General of the United States and each state Attorneys General or others, all as required by the Class Action Fairness Act, 28 U.S.C. § 1715(b). The Claims Administrator shall provide and Defendant shall cause to be filed with the Court a declaration evidencing such service.

4.2 Within fifteen days of entry of the Preliminary Approval Order, Heirloom will provide the Claims Administrator with a list of Settlement Class Members which will include, to the extent available, the name, email address, and physical mailing address of each Settlement Class Member. The Claims Administrator shall cause notice to be disseminated to the Settlement Class Members pursuant to the Preliminary Approval Order and the Notice Program as described below and in compliance with all applicable laws, including the Due Process clauses of the United States Constitution and Federal Rules of Civil Procedure Rule 23 and be effectuated pursuant to the provisions set forth below, the costs of which shall be a Settlement Cost. The Claims Administrator must maintain the list of Settlement Class Members in strict confidence and may

not share the list with anyone other than Heirloom. The Claims Administrator must enter into a confidentiality agreement and data security agreement as reasonably specified by Heirloom.

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

**4.3.1** Within fourteen days after receiving the Settlement Class list from Heirloom, the Claims Administrator shall send the Summary Notice via email to Settlement Class Members (the “Notice Deadline”). Within 20 days after sending such email, the Claims Administrator shall undertake reasonable efforts to resend notice to any Settlement Class Members for which the Claims Administrator receives a bounce-back notice. For those Settlement Class Members where an email bounce-back notice is received, the Claims Administrator shall send notice via First Class U.S. Mail.

**4.3.2** Within seven days after receiving the Settlement Class list from Heirloom, the Claims Administrator shall establish a dedicated settlement website that includes this Class Settlement Agreement, the Long Notice and the Claim Form approved by the Court. Settlement Class Counsel shall propose the format and content of the settlement website for approval by Defendant’s Counsel. The Claims Administrator shall maintain and update the website throughout the Claims Period. The Claims Administrator will also post on the settlement website copies of the motion for final approval of the Class Settlement Agreement and the motion for an Attorneys’ Fees and Expenses Award and a Service Award. A toll-free number with interactive voice response and FAQs shall also be made available to address Settlement Class Members’ inquiries. The settlement website shall not include any advertising and shall remain operational until 30 days following the Effective Date, at which time the Claims Administrator shall terminate the settlement website and transfer ownership of the URL to Heirloom.

**4.4** The Notice Program shall be subject to approval by the Court as meeting the requirements of due process and Rule 23(c) of the Federal Rules of Civil Procedure.

**4.5** The Long Notice, Summary Notice and Claim Form approved by the Court may be adjusted by the Claims Administrator in consultation and agreement with the Settling Parties as may be reasonable and necessary, so long as it is not inconsistent with such approval and does not materially alter the language approved by the Court.

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

## **5. OPT-OUT PROCEDURES**

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

**5.2** To be effective, a Request for Exclusion must be postmarked no later than 75 days after the date of entry of the Preliminary Approval Order or such other date set by the Court in the Preliminary Approval Order.

**5.3** Within seven days after the Opt-Out Deadline, the Claims Administrator shall provide the Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded themselves from the Settlement Class and, upon request, copies of all completed Requests for Exclusions. Settlement Class Counsel may file these materials with the Court, with any Personal Information other than names and cities and states of residence redacted, no later than seven days prior to the Final Approval Hearing.

**5.4** All persons who opt out of the Settlement Class shall not receive any benefits of or be bound by the terms of this Class Settlement Agreement. All persons falling within the definition

of the Settlement Class who do not opt out shall be bound by the terms of this Class Settlement Agreement and the Final Approval Order entered thereon.

**5.5** Notwithstanding anything else in this Agreement, if 5% or more of the persons meeting the definition of Settlement Class Members opt-out, Defendant shall have the unilateral option to terminate this Agreement at its sole discretion, and this Settlement Agreement shall be null and void and this settlement of no force and effect. If Defendant so elects, it shall give notice of such termination in writing to Settlement Class Counsel no later than 10 business days after receiving the list of persons who have requested exclusion from the Settlement Class. If Defendant terminates this Agreement, Defendant shall be obligated to pay the Claims Administrator for all costs and expenses incurred by the Claims Administrator for work performed in connection with this Settlement Agreement.

## **6. OBJECTION PROCEDURES**

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

**6.2** All such notices of an intent to object to the Class Settlement Agreement must be written and must include all of the following: (a) the objector's full name, address, telephone number and email address; (b) information identifying the objector as a Settlement Class Member, including proof that the objector is a member of the Settlement Class; (c) a statement as to whether the objection applies only to the Settlement Class Member, to a specific subset of the Settlement

Class, or to the entire class; (d) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection the objector believes applicable; (e) the identity of any counsel representing the objector; (f) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, identifying that counsel (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objections and any documents to be presented or considered; and (h) the objector's signature and the signature of the objector's duly authorized attorney or other duly authorized representative (if any).

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

**6.4** Except upon a showing of good cause, any Settlement Class Member who fails to substantially comply with the requirements in this Paragraph 6 for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Class Settlement Agreement and shall be bound by all the terms of the Class Settlement Agreement and by all proceedings, orders and judgments in the Litigation. The exclusive means for any challenge to the Class Settlement Agreement shall be through the provisions of this Paragraph 6.

## **7. CLAIMS ADMINISTRATION**

**7.1** The Claims Administrator shall administer and calculate the Settlement Claims submitted by Settlement Class Members. All Settlement Claims must be submitted on or before the Claims Filing Deadline to be deemed timely. The determination by the Claims Administrator of the validity or invalidity of all Settlement Claims shall be binding. The Claims Administrator shall periodically provide Settlement Class Counsel and Heirloom counsel with reports as to both settlement claims and distribution, and they shall have the right to obtain and review supporting documentation and challenge such reports if they believe them to be inaccurate or inadequate.

**7.2** For each settlement claim submitted and received, the Claims Administrator, in its sole discretion (to be reasonably exercised), will determine whether (a) the claimant is a Settlement Class Member and (b) that the claimant has provided all information required to complete the Claim Form by the Claims Filing Deadline, including but not limited to information required under Paragraph 2. The Claims Administrator may, at any time, request from the claimant, in writing, additional information as the Claims Administrator may reasonably require in order to adequately evaluate the settlement claim. All information provided to the Claims Administrator will be deemed confidential by the Claims Administrator.

**7.3** The Claims Administrator shall determine whether a claimant's Claim Form, along with supporting materials, is sufficient to support a claim. If the Claims Administrator should receive an incomplete Claim Form or a Claim Form with insufficient documentation to determine whether the claimant is a Settlement Class Member, the Claims Administrator shall request additional information and give the claimant 21 days to cure any defect(s) before rejecting a settlement claim. The Claims Administrator shall make requests for additional information within 21 days after the Claims Filing Deadline. If a Settlement Class Member fails to correct all deficiencies within 21 days from receiving a request for additional information, the Claims Administrator shall deny the claimant's settlement claim and the claimant will not be entitled to an Award.

**7.4** After receiving additional information, the Claims Administrator shall have 30 days to accept or reject each settlement claim. If, after review of the settlement claim and all documentation submitted by the claimant, the Claims Administrator determines that such a settlement claim is valid, then the settlement claim shall be paid within the time period provided in this Paragraph. If the settlement claim remains invalid because the claimant does not provide

the requested information needed to complete the Claim Form and evaluate the settlement claim, then the Claims Administrator may reject the settlement claim without any further action apart from providing a notice of rejection of the settlement claim.

**7.5** No Person shall have any claim against the Claims Administrator, Defendant, the Released Parties, or their counsel, Settlement Class Counsel and /or Representative Plaintiff based on distribution of Awards to Settlement Class Members.

**7.6** The Claims Administrator will send funds electronically (in an electronic payment format recommended by the Claims Administrator and agreed upon by the Parties, such as PayPal or Venmo) for Approved Claims within the later of 30 days after the Effective Date or 30 days after all disputed claims have been resolved. No distributions will be made without authorization from the Parties. If a Settlement Class Member cannot or chooses not to receive funds electronically, award checks shall be sent by U.S.P.S. Mail. Award checks (electronic and paper) shall be valid for a period of 180 days from issuance and shall state in words or substance that the check must be cashed within 180 days, after which time it will become void. In the event a settlement check becomes void, the Settlement Class Member to whom that settlement check was made payable will forfeit the right to payment and will not be entitled to have the check reissued or to any further distribution from the Settlement Fund or to any further recourse against the Released Parties, and the Agreement and Release will in all other respects be fully enforceable against the Settlement Class Member. No later than 190 days from the issuance of the Award checks, the Claims Administrator shall take all steps necessary to stop payment on any Award checks that remain uncashed.

**7.7** All Settlement Class Members who fail to timely submit a valid settlement claim hereunder within the time frames set forth herein, or such other period as may be ordered by the



Court or otherwise allowed, shall be forever barred from receiving an Award pursuant to this Agreement but will in all other respects be subject to and bound by the provisions of this Agreement, the Releases contained herein and the Final Approval Order.

**8. RELEASES**

**8.1** Upon the Effective Date, each Settlement Class Member, including Representative Plaintiff, whether or not they have received an Award, will be deemed by operation of this Class Settlement Agreement and by operation of the Final Approval Order to have forever fully, finally, completely and unconditionally released, discharged and acquitted Heirloom and the Released Parties from any and all of the Released Claims and will be deemed to have also released Unknown Claims. Further, upon the Effective Date and to the fullest extent permitted by law, each Settlement Class Member, including Representative Plaintiff, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting or participating in any recovery in any action in this or any other forum (other than the participation in the Agreement as provided herein) in which any of the Released Claims are asserted.

**8.2** Upon entry of the Final Approval Order, each Settlement Class Member, including Representative Plaintiff, shall be barred from initiating, asserting, or prosecuting against Heirloom and any Released Parties any claims that are released by operation of the Class Settlement Agreement and the Final Approval Order.

**8.3** Upon entry of the Final Approval Order, Representative Plaintiff by and through this Class Settlement Agreement and by operation of the Final Approval Order shall have forever fully, finally, completely and unconditionally released, discharged and acquitted Heirloom and the Released Parties from any and all Unknown Claims, even if unrelated to the Released Claims, and any and all provisions, rights, and benefits conferred by any law of any state, province, or territory

of the United States which is similar, comparable, or equivalent to California Civil Code section 1542, which provides:

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

**9. SETTLEMENT CLASS COUNSEL'S ATTORNEYS' FEES AND EXPENSES AWARD; REPRESENTATIVE PLAINTIFF'S SERVICE AWARD**

**9.1** Settlement Class Counsel may file a motion seeking reasonable attorneys' fees and costs in an amount not to exceed \$198,500. Heirloom will not object to Settlement Class Counsel's request for attorneys' fees and costs unless Representative Plaintiff's request exceeds the terms outlined in this Agreement.

**9.2** Settlement Class Counsel will also request from the Court a Service Award for Representative Plaintiff in the amount of \$1,500. Heirloom will not object to Representative Plaintiff's request for a Service Award payment unless Representative Plaintiff's request exceeds the terms outlined in this Agreement.

**9.3** Settlement Class Counsel's attorneys' fees and costs and Representative Plaintiff's Service Award shall be paid separately.

**9.4** Within twenty days after the date the Court approves the Attorneys' Fees and Expenses Award, the Claims Administrator shall pay any Attorneys' Fees and Expenses Award by check payable to Cole & Van Note and sent via UPS to:

Scott Edward Cole  
Cole & Van Note  
555 12<sup>th</sup> Street, Suite 1725  
Oakland, California 94607

**9.5** Within twenty days after the date the Court approves the Service Award to Representative Plaintiff, Defendant shall pay any Service Award by check payable to Jami Zucchero and sent via UPS to:

Scott Edward Cole  
Cole & Van Note  
555 12<sup>th</sup> Street, Suite 1725  
Oakland, California 94607

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

**9.7** Defendant shall not be liable for any additional attorneys' fees and expenses of Representative Plaintiff's Counsel in the Litigation.

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

**10.1** Defendant's willingness to settle this Litigation on a class-action basis and agree to the accompanying certification of the Settlement Class for settlement purposes is dependent on achieving finality in this Litigation and the desire to avoid the expense of this and other litigation. Consequently, Heirloom has the right to terminate this Class Settlement Agreement, declare it null and void, and have no further obligations under this Class Settlement Agreement to Representative Plaintiff, the Settlement Class or Settlement Class Counsel, unless each one of the following conditions occurs:

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

- d) The number of Opt-Outs is fewer than 5 percent of the estimated Settlement Class.

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

**10.3** In the event that the Class Settlement Agreement is not approved by the Court or the Class Settlement Agreement is terminated in accordance with its terms, (a) the Settling Parties shall be restored to their respective positions in the Litigation that existed prior to the mediation and shall jointly request that all scheduled litigation deadlines be reasonably extended by the Court so as to avoid prejudice to any Settling Party or litigant, which extension shall be subject to the decision of the Court; (b) the terms and provisions of the Class Settlement Agreement shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose; and any judgment or order entered by the Court in accordance with the terms of the Class Settlement Agreement, including certification of the Settlement Class for settlement purposes only, shall be treated as vacated, *nunc pro tunc*; and (c) any amounts still held by the Claims Administrator shall be returned to Heirloom. Notwithstanding any statement in this Class Settlement Agreement to the contrary, no order of the Court or modification or reversal on appeal of any order reducing the amount of any Attorneys' Fees and Expenses Award to Settlement Class Counsel shall constitute grounds for cancellation or termination of the Class Settlement Agreement.

**10.4** For the avoidance of doubt, Defendant conditionally agrees and consents to certification of the Settlement Class for settlement purposes only and within the context of the

Class Settlement Agreement only. If for any reason the Class Settlement Agreement is not fully approved or is otherwise terminated, Defendant reserves its right to assert any and all objections and defenses to certification of a class, and neither the Class Settlement Agreement nor any Order or other action relating to the Class Settlement Agreement shall be offered by any Person as evidence or in support of a motion to certify a class for a purpose other than settlement.

**11. MISCELLANEOUS PROVISIONS**

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

**11.2** The Parties intend this Class Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation and with regard to the Released Parties. The Class Settlement Agreement compromises claims that are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties each agree the settlement was negotiated in good faith by the Settling Parties and reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

**11.3** Neither the Class Settlement Agreement nor any act performed or document executed pursuant to or in furtherance of the Class Settlement Agreement (a) is or may be deemed to be or may be used as an admission of or evidence of the validity or lack thereof of any Released Claim or of any wrongdoing or liability of any of the Released Parties, 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 Released Parties, in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Any of the Released Parties may file the Class Settlement Agreement in any action that may be brought against them or any of them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

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

**11.6** Released Parties shall not be liable for any additional attorneys' fees, costs or expenses of any Settlement Class Members' counsel, including any potential objectors or counsel representing a Settlement Class Member individually, other than what is expressly provided for in this Class Settlement Agreement. Settlement Class Counsel agree to hold Released Parties harmless from any claim regarding the division of any award of attorneys' fees and expenses to

Settlement Class Counsel and any claim that the term “Settlement Class Counsel” fails to include any counsel, Person, or firm who claims that they are entitled to a share of any attorneys’ fees awarded to Settlement Class Counsel in this lawsuit.

**11.7** The Class Settlement Agreement shall be considered to have been negotiated, executed and delivered and to be wholly performed in the State of California, and the rights and obligations of the parties to the Class Settlement Agreement shall be construed and enforced in accordance with and governed by the internal, substantive laws of the State of California without giving effect to that State’s choice of law principles.

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

**11.9** The individual signing this Class Settlement Agreement on behalf of Heirloom represents he or she is fully authorized by Heirloom to enter into and to execute this Class Settlement Agreement on its behalf. Representative Plaintiff’s Counsel represent they are fully authorized to conduct settlement negotiations with counsel for Heirloom on behalf of

Representative Plaintiff and enter into and execute this Class Settlement Agreement on behalf of the Settlement Class, subject to Court approval pursuant to Fed. R. Civ. P. Rule 23(e).

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

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

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

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

For the Representative Plaintiff and the Settlement Class:

Scott Edward Cole  
Laura Van Note  
Cody Alexander Bolce  
COLE & VAN NOTE  
555 12<sup>th</sup> Street, Suite 1725  
Oakland, California 94607  
(510) 891-9800  
sec@colevannote.com  
lvn@colevannote.com  
cab@colevannote.com



For Heirloom:

Spencer Persson  
Jean M. Fundakowski  
DAVIS WRIGHT TREMAINE LLP  
865 S. Figueroa Street, Suite 2400  
Los Angeles, California 90017  
spencerpersson@dwt.com  
jeanfundakowski@dwt.com

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

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

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

Dated: 7/13/2023

Jami Zucchero:



ID ZcARyNs9mRXyypaVLh3FYNAU

Dated: \_\_\_\_\_, 2023

Heirloom Roses, Inc., by:

---

Approved as to form:

Dated: 7/13/2023

*Cody Bolce*

ID cW2pTgFAVHKaG5WT25vPxR8M

Scott Edward Cole, Esq.  
Laura Grace Van Note, Esq.  
Cody Alexander Bolce, Esq.  
COLE & VAN NOTE  
555 12th Street, Suite 1725  
Oakland, California 94607  
Telephone: (510) 891-9800  
sec@colevannote.com  
lvn@colevannote.com  
cab@colevannote.com

*Attorneys for Plaintiff Jami Zucchero*

---

Spencer Persson  
Jean M. Fundakowski  
DAVIS WRIGHT TREMAINE LLP  
865 S. Figueroa Street, Suite 2400  
Los Angeles, California 90017  
Telephone: (415) 276-6582  
Telephone: (213) 633-8634  
spencerpersson@dwt.com  
jeanfundakowski@dwt.com

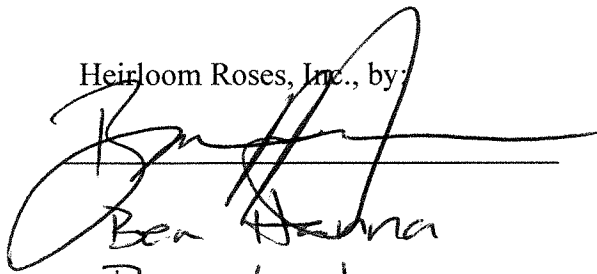
*Attorneys for Defendant  
Heirloom Roses, Inc.*

Dated: July 14, 2023

Approved as to form:

Dated:

Heirloom Roses, Inc., by:

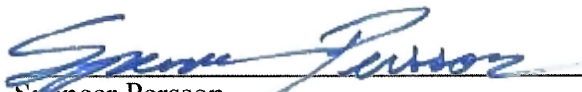
  
Ben Hanna  
President

Dated: July 17, 2023

---

Scott Edward Cole, Esq.  
Laura Grace Van Note, Esq.  
Cody Alexander Bolce, Esq.  
COLE & VAN NOTE  
555 12th Street, Suite 1725  
Oakland, California 94607  
Telephone: (510) 891-9800  
sec@colevannote.com  
lvn@colevannote.com  
cab@colevannote.com

*Attorneys for Plaintiff Jami Zuccherio*

  
Spencer Persson  
Jean M. Fundakowski  
DAVIS WRIGHT TREMAINE LLP  
865 S. Figueroa Street, Suite 2400  
Los Angeles, California 90017  
Telephone: (415) 276-6582  
Telephone: (213) 633-8634  
spencerpersson@dwt.com  
jeanfundakowski@dwt.com

*Attorneys for Defendant  
Heirloom Roses, Inc.*

# Exhibit A

## SETTLEMENT CLAIM FORM

This Claim Form should be filled out online or submitted by mail if you received a notice from Heirloom Roses, Inc. (“Heirloom”) in or around December 2021 regarding a data security incident that occurred at Heirloom between February of 2021 and October of 2021 (the “Data Security Incident”), or if you otherwise believe you were affected by the Data Security incident.

You may receive a payment if you properly and timely complete this Claim Form, the settlement is approved and you are found to be eligible for a payment.

The Notice describes your legal rights and options. You can obtain the Notice and further information about the Litigation, the Class Settlement Agreement and Release and your legal rights and options on the official settlement website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or by calling 1-800-xxx-xxxx.

Your claim must be submitted online or postmarked by \_\_\_\_\_, 2023 to be considered for payment. You can submit your claim for a settlement award in two ways:

1. Online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) by following instructions on the “Submit a Claim” page; or
2. By mail to the Claims Administrator at this address: [INSERT CLAIMS ADMINISTRATOR ADDRESS].

Only one Settlement Claim may be submitted per Settlement Class Member.

### 1. CLASS MEMBER INFORMATION (REQUIRED)

Name (First, MI, Last): \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

### 2. PAYMENT ELIGIBILITY INFORMATION (REQUIRED)

For more information about this Section of the Claim Form and the types of awards available and rules for receiving an award, please review the Notice and Sections 2.1 through 2.5 of the Class Settlement Agreement and Release (available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com)). You may select any or all of the awards for which you are eligible.

All Settlement Class Members who incurred Out-of-Pocket expenses fairly traceable to the Data Security Incident may claim a Reimbursement Award of up to \$200. If you are claiming a Reimbursement Award, check this box:

- Reimbursement Award (complete Sections 3, 4, 5 and 6)

**3. ADDITIONAL INFORMATION REQUIRED FROM SETTLEMENT CLASS MEMBERS SEEKING A REIMBURSEMENT AWARD.**

You must complete this Section 3 if you are seeking a Reimbursement Award. Please provide as much information as possible.

**Required:** I attest under penalty of perjury that I experienced one or more unauthorized or fraudulent charges from February 1, 2021 through December 31, 2021.

**Required:** Such charges have not been reimbursed.

**Required:** I believe in good faith such charges were more likely than not the result of the Data Security Incident described in the Notice.

The total amount of unreimbursed fraudulent charges that I am claiming is \$\_\_\_\_\_

**Examples:** Fraudulent charges that were made on your credit or debit card account and that were not reversed or repaid even though you reported them to your bank or credit card company.

**Required:** Attach a copy of statements that show the fraudulent charges and correspondence showing that you reported them as unauthorized. (You may redact all unrelated transactions). Attach documentation showing that the expenses are fairly traceable to the Security Incident. Attach documentation showing that your requests for reimbursement were denied. If you do not have any written correspondence reporting the charges, describe below when and how you reported them and to whom you reported them (attach pages as necessary):

\_\_\_\_\_

\_\_\_\_\_

**(Required).** I have made good faith efforts to have these unauthorized charges reversed or repaid, including through my bank or credit card company and have exhausted all available credit monitoring, identity theft insurance or other applicable insurance policies, but have not been successful at having the charges reversed, have not received payment and have no insurance coverage for these unauthorized charges.

*If you are seeking reimbursement for Out-of-Pocket Expenses as part of your claim for a Reimbursement Award, complete Section 4.*

**4. ADDITIONAL INFORMATION REQUIRED FROM SETTLEMENT CLASS MEMBERS SEEKING REIMBURSEMENT FOR OUT-OF-POCKET EXPENSES IN CONNECTION WITH A REIMBURSEMENT AWARD.**

I attest under penalty of perjury that I am making a claim for a Reimbursement Award, and that I incurred between February 1, 2021 and December 31, 2021 the following Out-of-Pocket Expenses fairly traceable to the Security Incident that affected the Heirloom website described in the Notice.

*Check all that apply, stating the total amount you are claiming for each category and attaching documentation of the charges as described below. Round total amounts to the nearest dollar.*

Unreimbursed payment card fees or bank fees:

Total amount claimed for this category: \$ \_\_\_\_\_

**Examples:** Unreimbursed card reissuance fees, unreimbursed overdraft fees, unreimbursed charges related to unavailability of funds, unreimbursed late fees, unreimbursed over-limit fees and unreimbursed fees relating to an account being frozen or otherwise unavailable due to the Security Incident.

**Required:** A copy of a bank or credit card statement or other proof of claimed fees or charges (please redact unrelated transactions).

Unreimbursed costs or charges for obtaining credit reports, credit freezes or credit monitoring or identity theft protection services purchased between February 1, 2021 and December 16, 2021:

Total amount claimed for this category: \$ \_\_\_\_\_

**Examples:** The cost of purchasing a credit report or placing a credit freeze.

**Required:** A copy of a receipt or other proof of purchase for each credit report, credit freeze or credit monitoring or identity theft protection services (up to two years of coverage) purchased or placed.

Lost time:

Total amount claimed for this category (\$20 per hour for up to two hours for a total of up to \$40): \$ \_\_\_\_\_

Examples: Time spent researching the Security Incident

**Required:** By submitting a claim for lost time, I certify that my claim is true and correct.

## 5. PAYMENT METHOD

Please select the manner in which payment will be issued for your valid Claims.

- PayPal\*:  \_\_\_\_\_ (PayPal Email Address)
- Venmo\*:  \_\_\_\_\_ (Venmo Email Address)
- Zelle\*:  \_\_\_\_\_ (Zelle Email Address)
- Paper Check via Mail:

\*If you select payment via PayPal, Venmo or Zelle, the email address entered on this form will be used to process the payment to your account linked to that email address. If you do not have a PayPal, Venmo or Zelle account, you will be prompted to open one using the email address entered on this form.

## 6. CERTIFICATION

The information I have supplied in this Claim Form is true and correct to the best of my recollection and this form was executed on the date set forth below.

I understand all information provided on this Claim Form is subject to verification and that I may be asked to provide supplemental information by the Claims Administrator before my claim will be considered complete and valid.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Once you've completed all applicable sections, please mail this Claim Form and all required supporting documentation to the address provided below, postmarked by \_\_\_\_\_, 2023.

**[INSERT CLAIMS ADMINISTRATOR ADDRESS]**



# Exhibit B

**NOTICE OF CLASS ACTION SETTLEMENT**

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA  
*Jami Zuccherro v. Heirloom Roses, Inc.*, Case No. 4:22-cv-00068-KAW

**To:** All individuals identified by Heirloom Roses, Inc. (“Heirloom”) and to whom Heirloom sent notice on or about December 16, 2021, that their information may have been impacted in the Data Security Incident, defined below.

A proposed settlement has been reached in a class action lawsuit titled, *Jami Zuccherro v. Heirloom Roses, Inc.*, Case No. 4:22-cv-00068-KAW (Northern District of California). The lawsuit asserts claims against Defendant Heirloom related to a security incident that occurred between February and October of 2021 and about which Heirloom notified potentially impacted individuals in December 2021 (the “Data Security Incident”). Defendant denies all of the claims and denies it did anything wrong.

The settlement offers payments to individuals in the United States whose name and payment card information was potentially exposed to unauthorized third-parties as a result of the Data Security Incident that occurred between approximately February to October of 2021 (“Settlement Class Members”). The amounts paid will depend upon how many people submit valid claims but initially are set at the following amounts:

A Reimbursement Award of up to \$200, as explained below.

If you are a Settlement Class Member, your options are:

<b>SUBMIT A CLAIM FORM DEADLINE:</b> _____	You must submit a valid claim form to receive a payment from this Settlement.
<b>DO NOTHING</b>	You will receive no payment and will no longer be able to sue Defendant over the claims resolved in the settlement.
<b>EXCLUDE YOURSELF DEADLINE:</b> _____	You may exclude yourself from this settlement and keep your right to sue separately. If you exclude yourself, you receive no payment. Exclusion instructions are provided in this Notice.
<b>OBJECT DEADLINE:</b> _____	If you do not exclude yourself, you may write to the Court to comment on or detail why you do not like the settlement by following the instructions in this Notice. The Court may reject your objection. You must still file a claim if you desire any monetary relief under the settlement.

The Court must give final approval to the settlement before it takes effect but has not yet done so. No payments will be made until after the court gives final approval and any appeals are resolved.

**Please review this Notice carefully.** You can learn more about the settlement by visiting [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or by calling 1-800-XXX-XXXX.

## **Further Information about this Notice and the Lawsuit**

### *1. Why was this Notice issued?*

Settlement Class Members are eligible to receive payment from a proposed settlement of the Lawsuit. The court overseeing the Lawsuit pending in the Northern District of California authorized this Notice to advise Settlement Class Members about the proposed settlement that will affect their legal rights. This Notice explains certain legal rights and options Settlement Class Members have in connection with the settlement.

### *2. What is the Lawsuit about?*

The lawsuit is a proposed class action lawsuit brought on behalf of certain Heirloom customers whose information may have been accessed and exfiltrated by unauthorized individuals as part of the Data Security Incident. The affected information may include names and payment card information.

The Lawsuit claims Heirloom is legally responsible for the Data Security Incident and asserts legal claims, including negligence and breach of contract. Heirloom denies these claims and denies it did anything wrong.

### *3. Why is the Lawsuit a class action?*

In a class action, one or more representative plaintiffs brings a lawsuit on behalf of others who have similar claims. Together, all of these people are the “Class” and each individually is a “Class Member.” There is one Representative Plaintiff in this case: Jami Zucchero. The class in this case is referred to in this Notice as the “Settlement Class.”

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

The Representative Plaintiff in the Lawsuit, through her attorneys, investigated the facts and law relating to the issues in the Lawsuit. Representative Plaintiff and Class Counsel believe the settlement is fair, reasonable and adequate and will provide substantial benefits to the Settlement Class. The Court has not decided whether the Representative Plaintiff’s claims or Heirloom’s defenses have any merit, and it will not do so if the proposed settlement is approved. By agreeing to settle, both sides avoid the cost and risk of a trial and people who submit valid claims will receive compensation. The settlement does not mean that Heirloom did anything wrong, or that the Representative Plaintiff and the Class would or would not win their case if it went to trial.

## **Terms of the Proposed Settlement**

### *5. Who is in the Settlement Class?*

The Settlement Class is defined by the Court as all individuals within the United States whose name and payment card information was potentially exposed to unauthorized third-parties as a result of the Data Security Incident that occurred between approximately February to October of 2021. Excluded from the Settlement Class is any judge presiding over the Litigation and any members of their first-degree relatives, judicial staff and/or persons who timely and validly request exclusion from the Settlement Class.

6. *What are the terms of the settlement?*

Under the terms of the settlement, if Settlement Class Members experienced unreimbursed, unauthorized or fraudulent charges or out of pocket expenses which they believe in good faith were fairly traceable to the Data Security Incident, They may file a claim for a Reimbursement Award of up to \$200. As part of the \$200 reimbursement, if Settlement Class Members spent time researching the Data Security Incident or attempting to ensure the security of their information, they may file a claim for a Reimbursement Award for up to 2 hours of time spent at \$20 per hour. Defendant will pay (a) the costs of administration and notice (approximately \$ [REDACTED]), (b) any attorneys' fees and costs awarded by the Court to Class Counsel (up to \$198,500) including litigation costs and expenses) and (c) any service award to the Representative Plaintiff awarded by the Court (up to \$1,500). The settlement also releases all claims or potential claims of Settlement Class Members against Defendant arising from or related to the Data Security Incident, as detailed in the Class Settlement Agreement and Release.

7. *What claims are Settlement Class Members giving up under the settlement?*

Settlement Class Members who do not validly exclude themselves from the settlement will be bound by the Class Settlement Agreement and Release and any Final Judgment entered by the Court and will give up their right to sue Defendant for the claims being resolved by the settlement, including all claims or potential claims of Settlement Class Members against Defendant arising from or related to the Data Security Incident. The claims that Settlement Class Members are releasing are described in Section 1.30 of the Class Settlement Agreement and Release and the persons and entities being released from those claims are described in Section 1.31 of the Class Settlement Agreement and Release. Section 8 of the Class Settlement Agreement and Release explains when such releases will occur.

**Payments to Settlement Class Members**

8. *What kind of payments can Settlement Class Members receive?*

Under the terms of the settlement, if Settlement Class Members experienced unreimbursed, unauthorized or fraudulent charges or out of pocket expenses which they believe in good faith were fairly traceable to the Data Security Incident, They may file a claim for a Reimbursement Award of up to \$200. As part of the \$200 reimbursement, if Settlement Class Members spent time researching the Data Security Incident or attempting to ensure the security of their information, they may file a claim for a Reimbursement Award for up to 2 hours of time spent at \$20 per hour.

10. *What is a Reimbursement Award?*

Settlement Class Members who, at any time from February 1, 2021 to [ENTER CLAIMS DEADLINE], experienced unauthorized or fraudulent charges, other out of pocket losses or lost time that are fairly traceable to the Data Security Incident are eligible to receive a Reimbursement Award of up to \$200 as reimbursement for those charges and expenses. The following types expenses may be claimed:

- payment card fees or bank fees, including card reissuance fees, overdraft fees, charges related to unavailability of funds, late fees, over-limit fees and fees relating to an account being frozen or otherwise unavailable due to the Data Security Incident;
- costs or charges for obtaining credit reports, credit freezes or credit monitoring or identity theft protection services; and
- Lost time at \$20 per hour up to two hours for a total of \$40.

You cannot recover for emotional distress. Claimants must exhaust all available credit monitoring insurance and identity theft insurance before seeking a Reimbursement Award. Settlement Class Members seeking a Reimbursement Award must provide the information and documents required on the Claim Form.

### **Your Options as a Settlement Class Member**

13. *If I am a Settlement Class Member, what options do I have?*

If you are a Settlement Class Member, you do not have to do anything to remain in the settlement. **However, if you wish to seek an award under the settlement, you must complete and submit a Claim Form postmarked or submitted online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) by [INSERT DATE].**

If you do not want to give up your right to sue Defendant about the Data Security Incident or the issues raised in this case, **you must exclude yourself (or “opt out”) from the Settlement Class.** See Question 17 below for instructions on how to exclude yourself.

If you wish to object to the settlement, you must remain a Settlement Class Member (*i.e.*, you may not also exclude yourself from the Settlement Class by opting out) and submit a written objection. See Question 20 below for instructions on how to submit an objection.

14. *What happens if I do nothing?*

If you do nothing, you will get no award from this settlement. Unless you exclude yourself, after the settlement is granted final approval and the judgment becomes final, you will be bound by the judgment and you will never be able to start a lawsuit, continue with a lawsuit or be part of any other lawsuit against Defendant related to the claims released by the settlement.

15. *How do I submit a claim?*

You may complete the Claim Form online at [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You may also obtain a paper Claim Form by downloading it at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or by calling the claims administrator at **[INSERT TOLL-FREE NUMBER]**. If you choose to complete a paper Claim Form, you may either submit the completed and signed Claim Form and any supporting materials electronically at [www.\\_\\_\\_\\_\\_.com](http://www._____.com) or mail them to: **[INSERT CLAIMS MAILING ADDRESS]**.

16. *Who decides my settlement claim and how do they do it?*

The Claims Administrator will decide whether a Claim Form is complete and valid and includes all required documentation. The Claims Administrator may require additional information from any claimant. Failure to timely provide all required information will invalidate a claim and it will not be paid.

17. *How do I exclude myself from the settlement?*

To opt out of the settlement you must make a signed, written request that (a) says you wish to exclude yourself from the Settlement Class in this Lawsuit and (b) includes your name, address and phone number. You must submit your request through the settlement website ([www. .com](http://www. .com)) or mail your request to this address:

**[INSERT REQUEST FOR EXCLUSION MAILING ADDRESS]**

Your request must be submitted online or postmarked by **[INSERT DATE]**.

18. *If I exclude myself, can I receive any payment from this settlement?*

No. If you exclude yourself, you will not be entitled to any award. However, you will also not be bound by any judgment in this Lawsuit.

19. *If I do not exclude myself, can I sue Defendant for the Data Security Incident later?*

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

20. *How do I object to the settlement?*

All Settlement Class Members who do not request exclusion from the Settlement Class have the right to object to the settlement or any part of it. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

Any objection to the proposed settlement must be in writing and it and any supporting papers must be mailed to the Clerk of the Court, Settlement Class Counsel and Heirloom's Counsel, at the mailing addresses listed below. Your objection must be filed or postmarked no later than the objection deadline, **[INSERT OBJECTION DEADLINE]**:

<b>Court</b>	<b>Heirloom's Counsel</b>
Office of the Clerk U.S. District Court for the Northern District of California Ronald V. Dellums Federal Building & United States Courthouse 1301 Clay Street, Suite 400 S	Spencer Persson Jean M. Fundakowski DAVIS WRIGHT TREMAINE LLP 865 S. Figueroa Street, Suite 2400 Los Angeles, California 90017

Oakland, California 94612	
<b>Settlement Class Counsel</b>	
Scott Edward Cole Laura Van Note Cody Alexander Bolce COLE & VAN NOTE 555 12th Street, Suite 1725 Oakland, California 94607	

To be considered by the Court, your objection must list the name of the Lawsuit: *Jami Zucchero v. Heirloom Roses, Inc., Case No. 4:22-cv-00068-KAW* (Northern District of California) and include all of the following information: (a) your full name, address, telephone number and e-mail address (if any), (b) information identifying you as a Settlement Class Member, including proof that you are a member of the Settlement Class (such as the notice you received from Heirloom or the notice of this settlement), (c) a statement as to whether your objection applies only to yourself, to a specific subset of the Settlement Class or to the entire class, (d) a clear and detailed written statement of the specific legal and factual bases for each and every objection, accompanied by any legal support for the objection you believe is applicable, (e) the identity of any counsel representing you, (f) a statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying that counsel, (g) a list of all persons who will be called to testify at the Final Approval Hearing in support of your objections and any documents to be presented or considered and (h) your signature and the signature of your duly authorized attorney or other duly authorized representative (if any).

If you submit a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

### **Court Approval of the Settlement**

21. *How, when and where will the Court decide whether to approve the settlement?*

The Court will hold a Final Approval Hearing to decide whether to approve the settlement. That hearing is scheduled for \_\_\_\_\_, 202\_\_ at \_\_\_\_\_ a.m./p.m. at the Oakland Courthouse, 1301 Clay Street Oakland, California 94612, before Judge Kandis A. Westmore. Judge Westmore will continue to hold hearings by Zoom or teleconference until further notice. Please visit Judge Westmore’s page at <https://www.cand.uscourts.gov/judges/westmore-kandis-a-kaw/> for current information regarding courthouse access and court hearings. At the Final Approval Hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are timely

objections, the Court will consider them and will listen to people who have properly requested to speak at the hearing. The Court may also consider Settlement Class Counsel's request for attorneys' fees and costs and the request for the service award for the Representative Plaintiff. After the hearing, the Court will decide whether to approve the settlement.

It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check [www.uscourts.gov](http://www.uscourts.gov) or access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov/cgi-bin/ShowIndex.pl> to confirm the schedule if you wish to attend.

22. *Do I have to attend the hearing?*

No. You do not need to attend the hearing unless you object to the settlement and wish to appear in person. It is not necessary to appear in person in order to make an objection; the Court will consider any written objections properly submitted according to the instructions in Question 20. You or your own lawyer are welcome to attend the hearing at your expense, but are not required to do so.

23. *What happens if the Court approves the settlement?*

If the Court approves the settlement and no appeal is taken the Claims Administrator will pay any attorneys' fees and costs award and Representative Plaintiff's service award. Then, within the later of 30 days after the Effective Date or 30 days after all disputed claims have been resolved, the Claims Administrator will send settlement payments to Settlement Class Members who submitted timely and valid Settlement Claims.

If any appeal is taken, it is possible the settlement could be disapproved on appeal.

24. *What happens if the Court does not approve the settlement?*

If the Court does not approve the settlement, there will be no settlement payments to Settlement Class Members, Settlement Class Counsel or the Representative Plaintiff and the case will proceed as if no settlement had been attempted.

### **Lawyers for the Settlement Class and Defendant**

25. *Who represents the Settlement Class?*

The Court has appointed the following Class Counsel to represent the Settlement Class in this Lawsuit:

Scott Edward Cole  
Laura Van Note  
Cody Alexander Bolce  
COLE & VAN NOTE



555 12th Street, Suite 1725  
Oakland, California 94607  
(510) 891-9800

Settlement Class Members will not be charged for the services of Settlement Class Counsel. However, you may hire your own attorney at your own cost to advise you in this matter or represent you in making an objection or appearing at the Final Approval Hearing.

26. *How will the lawyers for the Settlement Class be paid?*

Settlement Class Counsel will request the Court's approval of an award for attorneys' fees and costs up to \$198,500. Settlement Class Counsel will also request approval of a Service Award of \$1,500 to Representative Plaintiff.

27. *Who represents Defendant in the Lawsuit?*

Defendant is represented by the following lawyers:

Spencer Persson  
Jean M. Fundakowski  
DAVIS WRIGHT TREMAINE LLP  
865 S. Figueroa Street, Suite 2400  
Los Angeles, California 90017

#### **For Further Information**

28. *What if I want further information or have questions?*

This Notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the Class Settlement Agreement and Release available at [www. .com](http://www. .com), by contacting Settlement Class Counsel at the phone numbers provided in response to Question 25 above, by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov/cgi-bin/ShowIndex.pl> or by visiting the Office of the Clerk, U.S. District Court for the Northern District of California, at the Ronald V. Dellums Federal Building & United States Courthouse at 1301 Clay Street, Suite 400 S, Oakland, California 94612, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

will act as the Claims Administrator for the settlement. You can contact the Claims Administrator at:

**[INSERT CONTACT INFO FOR CLAIMS ADMINISTRATOR]**

**Please do not contact the Court.**

# Exhibit C

Email/Postcard Notice

Heirloom Rose, Inc. Claims Administrator  
PO Box XXXX  
XXXXXXXXXX

Unique ID <<UNIQUEID>>

## **If you were notified of a Data Security Incident involving Heirloom Roses, Inc., you may be entitled to benefits from a settlement.**

A proposed settlement has been reached in a class action lawsuit against Heirloom Roses, Inc. (“Heirloom”) related to a security incident that occurred between February and October 2021, and about which Heirloom notified potentially impacted individuals in or around December 2021. The lawsuit claims Heirloom is legally responsible for the Data Security Incident, where names and payment card information of customers may have been accessed and exfiltrated by unauthorized individuals. The lawsuit asserts various legal claims, including negligence and breach of implied contract. Heirloom denies these claims and denies it did anything wrong.

**You are receiving this notice because you may be a Settlement Class Member.** The Settlement Class is defined by the Court as all individuals within the United States whose name and personal payment card information was potentially exposed to unauthorized third-parties as a result of the Data Security Incident that occurred between approximately February to October of 2021.

Under the terms of the settlement, if you experienced unreimbursed, unauthorized or fraudulent charges or out of pocket expenses which you believe in good faith were fairly traceable to the Data Security Incident, you may file a claim for a Reimbursement Award of up to \$200. If you spent time researching the Data Security Incident or attempting to ensure the security of your information, you may file a claim for a Reimbursement Award for up to 2 hours of time spent at \$20 per hour.

The easiest way to submit a claim is online at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com) using your Unique ID that is included with this notice. To be eligible, you must complete and submit a valid Claim Form, postmarked or submitted online on or before **MONTH DAY, 20XX**. You can also exclude yourself or object to the Settlement on or before **MONTH DAY, 20XX**. If you do not exclude yourself from the Settlement, you will remain in the Class and will give up the right to sue Heirloom over the claims resolved in the Settlement. **A summary of your rights under the Settlement and instructions regarding how to submit a claim, exclude yourself or object are available at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com).**

The Court will hold a Final Approval Hearing on **MONTH DAY, 20XX, at X:XX X.m.** At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also listen to people who have asked to speak at the hearing. You may attend the hearing at your own expense or pay your own lawyer to attend, but it is not necessary. It is possible the Court could reschedule the hearing to a different date or time without notice, so it is a good idea before the hearing to check [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com).

This notice is a summary. The Settlement Agreement and more information about the lawsuits and Settlement are available at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com) or by calling toll-free **1-XXX-XXX-XXXX**.

# Exhibit D

COLE & VAN NOTE  
ATTORNEYS AT LAW  
555 12<sup>TH</sup> STREET, SUITE 1725  
OAKLAND, CA 94607  
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)  
Laura Grace Van Note, Esq. (S.B. #310160)  
2 Cody Alexander Bolce, Esq (S.B. #322725)  
**COLE & VAN NOTE**  
3 555 12<sup>th</sup> Street, Suite 1725  
Oakland, California 94607  
4 Telephone: (510) 891-9800  
Facsimile: (510) 891-7030  
5 Email: sec@colevannote.com  
Email: lvn@colevannote.com  
6 Email: cab@colevannote.com  
Web: www.colevannote.com  
7

8 Attorneys for Representative Plaintiff

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

13 JAMI ZUCCHERO, individually and on  
behalf of all others similarly situated,  
14  
Plaintiff,  
15 vs.  
16 HEIRLOOM ROSES, INC.,  
17  
Defendant.

**Case No. 4:22-cv-00068-KAW**

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

**Date:**  
**Time:**  
**Judge: Hon. Kandis A. Westmore**  
**Ctrm:**

21  
22  
23  
24  
25  
26  
27  
28

1 Before the Court is Plaintiff’s Unopposed Motion for Preliminary Approval of Class  
2 Action Settlement, (Doc. No. \_\_\_ ) (the “Motion”), the terms of which are set forth in a Settlement  
3 Agreement with accompanying exhibits attached as **Exhibit 2** to Plaintiff’s Motion (the  
4 “Settlement Agreement”).<sup>1</sup> Having fully considered the issue, the Court hereby **GRANTS** the  
5 Motion and orders as follows:

6 1. **Class Certification for Settlement Purposes Only.** The Settlement Agreement  
7 provides for a Settlement Class defined as follows:

8 All individuals within the United States whose name and payment card information was  
9 potentially exposed to unauthorized third-parties as a result of the Data Security Incident  
10 that occurred between approximately February to October of 2021..

11 Excluded from the Settlement Class is any judge presiding over the Litigation and their  
12 first-degree relatives, judicial staff and persons who timely and validly request exclusion from the  
13 Settlement Class.

14 Pursuant to Federal Rules of Civil Procedure Rule 23(e)(1), the Court finds giving notice  
15 is justified. The Court finds that it will likely be able to approve the proposed Settlement as fair,  
16 reasonable and adequate. The Court also finds it will likely be able to certify the Settlement Class  
17 and California Subclass for purposes of judgment on the Settlement because they meet the  
18 requirements of Rule 23(a) and the requirements of Rule 23(b)(3). Specifically, the Court finds  
19 for settlement purposes only that (a) the Settlement Class is so numerous that joinder of all  
20 Settlement Class Members would be impracticable, (b) there are issues of law and fact that are  
21 common to the Settlement Class, (c) the claims of Representative Plaintiff are typical of and arise  
22 from the same operative facts and Representative Plaintiff seeks similar relief as the claims of the  
23 Settlement Class Members, (d) Representative Plaintiff will fairly and adequately protect the  
24 interests of the Settlement Class as Representative Plaintiff has no interest antagonistic to or in  
25 conflict with the Settlement Class and has retained experienced and competent counsel to  
26 prosecute this Litigation on behalf of the Settlement Class, (e) questions of law or fact common to  
27 Settlement Class Members predominate over any questions affecting only individual members and

28 <sup>1</sup> All defined terms herein have the same meaning as set forth in the Settlement Agreement.

1 (f) a class action and class settlement is superior to other methods available for a fair and efficient  
2 resolution of this Litigation.

3 2. **Settlement Class Representatives and Settlement Class Counsel.** The Court  
4 finds Plaintiff Jami Zucchero will likely satisfy the requirements of Rule 23(e)(2)(A) and should  
5 be appointed as Settlement Class Representative. Additionally, the Court finds that Scott Edward  
6 Cole, Laura Van Note and Cody Alexander Bolce of Cole & Van Note satisfy the requirements of  
7 Rule 23(e)(2)(A) and should be appointed as Settlement Class Counsel pursuant to Rule 23(g)(1).  
8

9 3. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds the  
10 Settlement is fair, reasonable and adequate to warrant providing Notice of Settlement to the  
11 Settlement Class and accordingly is preliminarily approved. In making this determination, the  
12 Court has considered the monetary and nonmonetary benefits provided to the Settlement Class  
13 through the Settlement, the specific risks faced by the Settlement Class in prevailing on their  
14 claims, the stage of the proceedings at which the Settlement was reached and the discovery that  
15 was conducted, the effectiveness of the proposed method for distributing relief to the Settlement  
16 Class, the proposed manner of allocating benefits to Settlement Class Members and all of the other  
17 factors required by Rule 23.

18 4. **Jurisdiction.** The Court has subject matter jurisdiction pursuant to 28 U.S.C.  
19 § 1332(d)(2) and personal jurisdiction over the parties before it. Additionally, venue is proper in  
20 this District pursuant to 28 U.S.C. § 1391(b)(1).

21 5. **Final Approval Hearing.** A Final Approval Hearing shall be held on \_\_\_\_\_  
22 \_\_\_\_\_, 202\_\_\_, at \_\_\_\_\_ [via telephone or videoconference or in-person] at the Ronald V.  
23 Dellums Federal Building & United States Courthouse at 1301 Clay Street, Oakland, California  
24 94612 to determine, among other things, whether (a) this Litigation should be finally certified as  
25 a class action for settlement purposes pursuant to Fed. R. Civ. P. Rule 23(a) and (b)(3), (b) the  
26 Settlement should be approved as fair, reasonable and adequate and finally approved pursuant to  
27 Fed. R. Civ. P. Rule 23(e), (c) Settlement Class Members should be bound by the releases set forth  
28 in the Settlement Agreement (d) the application of Settlement Class Counsel for an award of

1 attorneys' fees, costs and expenses should be approved pursuant to Fed. R. Civ. P. Rule 23(h) and  
2 (d) the application of the Settlement Class Representative for a Service Award should be approved.

3 6. **Claims Administrator.** The Court appoints CPT Group as the Claims  
4 Administrator, with responsibility for class notice and claims administration. The Claims  
5 Administrator is directed to perform all tasks the Settlement Agreement requires. The Claims  
6 Administrator's fees will be paid pursuant to the terms of the Settlement Agreement.

7 7. **Notice.** The proposed Notice Plan set forth in the Settlement Agreement and the  
8 Notices and Claim Form attached to the Settlement Agreement as Exhibits A, B and C are hereby  
9 approved. Non-material modifications to these Exhibits may be made with approval by the parties  
10 but without further order of the Court.

11 8. **Findings Concerning Notice.** The Court finds the proposed form, content and  
12 method of giving Notice to the Settlement Class as described in the Notice Plan and the Settlement  
13 Agreement and its Exhibits (a) will constitute the best practicable notice to the Settlement Class,  
14 (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of  
15 the pendency of the Litigation, the terms of the proposed Settlement and their rights under the  
16 proposed Settlement, including but not limited to their rights to object to or exclude themselves  
17 from the proposed Settlement and other rights under the terms of the Settlement Agreement, (c)  
18 are reasonable and constitute due, adequate and sufficient notice to all Settlement Class Members  
19 and other persons entitled to receive notice, (d) meet all applicable requirements of law, including  
20 Fed. R. Civ. P. Rule 23(c) and (e) the Due Process clauses of the United States Constitution. The  
21 Court further finds the Notice is written in plain language, uses simple terminology and is designed  
22 to be readily understandable by Settlement Class Members.

23 The Claims Administrator is directed to carry out the Notice in conformance with the  
24 Settlement Agreement.

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



1           10.     **Exclusion from Class.** Any Settlement Class Member who wishes to be excluded  
2 from the Settlement Class must mail a written opt-out Request for Exclusion to the Claims  
3 Administrator at the address and in the manner provided in the Notice. Such opt-out Requests for  
4 Exclusion must meet the Opt-Out Deadline established by this Order and stated in the Notice.

5           For a Request for Exclusion to be properly completed and executed, subject to approval by  
6 the Court, it must (a) state the Settlement Class Member's full name, address and telephone  
7 number, (b) contain the Settlement Class Member's personal and original signature or the original  
8 signature of a person authorized by law to act on the Settlement Class Member's behalf with  
9 respect to a claim or right such as those asserted in the Litigation, such as a trustee, guardian or  
10 person acting under a power of attorney and (c) state unequivocally the Settlement Class Member's  
11 intent to be excluded from the settlement. All Requests for Exclusion must be submitted  
12 individually in connection with a Settlement Class Member (i.e., one request is required for every  
13 Settlement Class Member seeking exclusion).

14           Within 7 days after the Opt-Out Deadline, the Claims Administrator shall provide the  
15 Settling Parties with a complete and final list of all Opt-Outs who have timely and validly excluded  
16 themselves from the Settlement Class and, upon request, copies of all completed Requests for  
17 Exclusions.

18           If the final Judgment is entered, any Settlement Class Member who has not submitted a  
19 timely, valid written Opt-Out Request for Exclusion from the Settlement Class shall be bound by  
20 all subsequent proceedings, orders and judgments in this Litigation, including but not limited to  
21 the release set forth in the Final Judgment. Settlement Class Members who submit valid and timely  
22 Opt-Out Requests for Exclusion shall not be entitled to receive any benefits from the Settlement.

23           11.     **Objections and Appearances.** A Settlement Class Member who does not file a valid and  
24 timely Request for Exclusion may file with the Court a notice of intent to object to the Class  
25 Settlement Agreement. The Long Notice shall instruct Settlement Class Members who wish to  
26 object to the Agreement to send their written objections only to the Court. The Notice shall make  
27 clear the Court can only approve or deny the Class Settlement Agreement and cannot change the  
28 terms. The Notice shall advise Settlement Class Members of the deadline for submission of any

1 objections. Any such notices of an intent to object to the Class Settlement Agreement must be  
2 written and must include all of the following: (a) the objector's full name, address, telephone  
3 number and email address (if any), (b) information identifying the objector as a Settlement Class  
4 Member, including proof that the objector is a member of the Settlement Class, (c) a statement as  
5 to whether the objection applies only to the Settlement Class Member, to a specific subset of the  
6 Settlement Class or to the entire class, (d) a clear and detailed written statement of the specific  
7 legal and factual bases for each and every objection, accompanied by any legal support for the  
8 objection the objector believes applicable, (e) the identity of any counsel representing the objector,  
9 (f) a statement whether the objector intends to appear at the Final Approval Hearing, either in  
10 person or through counsel, and, if through counsel, identifying that counsel, (g) a list of all persons  
11 who will be called to testify at the Final Approval Hearing in support of the objections and any  
12 documents to be presented or considered and (h) the objector's signature and the signature of the  
13 objector's duly authorized attorney or other duly authorized representative (if any). To be timely,  
14 written notice of an objection in the appropriate form must be filed or postmarked no later than the  
15 Objection Deadline.

16 Any Settlement Class Member who fails to comply with the provisions in this Order will  
17 waive and forfeit any and all rights they may have to object, will have their objection stricken from  
18 the record and will lose their rights to appeal from approval of the Settlement. Any such Settlement  
19 Class Member also shall be bound by all subsequent proceedings, orders and judgments in this  
20 Litigation, including but not limited to the release set forth in the Final Judgment if entered.

21 12. **Claims Process.** Settlement Class Counsel and Defendant have created a process  
22 for Settlement Class Members to claim benefits under the Settlement. The Court preliminarily  
23 approves this process and directs the Claims Administrator to make the Claim Form or its  
24 substantial equivalent available to Settlement Class Members in the manner specified in the  
25 Notice.

26 The Claims Administrator will be responsible for effectuating the claims process.

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

1 If the Final Judgment is entered, all Settlement Class Members who qualify for any benefit under  
2 the Settlement but fail to submit a claim in accordance with the requirements and procedures  
3 specified in the Notice and the Claim Form shall be forever barred from receiving any such benefit  
4 but will in all other respects be subject to and bound by the provisions in the Final Judgment,  
5 including the release.

6  
7 13. **Termination of Settlement.** This Order shall become null and void and shall be  
8 without prejudice to the rights of the parties, all of whom shall be restored to their respective  
9 positions existing before the Court entered this Order and before they entered the Settlement  
10 Agreement, if (a) the Court does not enter this Preliminary Approval Order, (b) Settlement is not  
11 finally approved by the Court or is terminated in accordance with the Settlement Agreement, (c)  
12 there is no Effective Date or (d) the number of Opt-Outs is greater than five percent of the estimated  
13 Settlement Class. In such event, the Settlement and Settlement Agreement shall become null and  
14 void and be of no further force and effect and neither the Settlement Agreement nor the Court's  
15 orders, including this Order, relating to the Settlement shall be used or referred to for any purpose  
16 whatsoever.

17 14. **Use of Order.** This Order shall be of no force or effect if the Final Judgment is  
18 not entered or there is no Effective Date and shall not be construed or used as an admission,  
19 concession or declaration by or against Defendant of any fault, wrongdoing, breach or liability.  
20 Nor shall this Order be construed or used as an admission, concession or declaration by or against  
21 the Representative Plaintiff or any other Settlement Class Member that his or her claims lack merit  
22 or that the relief requested is inappropriate, improper, unavailable or as a waiver by any party of  
23 any defense or claims they may have in this Litigation or in any other lawsuit.

24 16. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the  
25 Final Approval Hearing and related deadlines without further written notice to the Settlement  
26 Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on  
27 the Settlement Website maintained by the Claims Administrator. The Court may approve the  
28 Settlement, with such modifications as may be agreed upon by the parties, if appropriate, without

1 further notice to the Settlement Class.

2 17. **Stay of Litigation.** All proceedings in the Litigation other than those related to  
 3 approval of the Class Settlement Agreement are hereby stayed. Further, any actions brought by  
 4 Settlement Class Members concerning the Released Claims are hereby enjoined and stayed  
 5 pending Final Approval of the Class Settlement Agreement.

6 17. **Schedule and Deadlines.** The Court orders the following schedule of dates for the  
 7 specified actions/further proceedings:

Event	Timing
<b>Defendant Provides CAFA Notice required by 28 U.S.C. § 1715(b)</b>	Within 10 days after the filing of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement
<b>Defendant Provides Class List to Claims Administrator</b>	Within 15 days after entry of this Preliminary Approval Order
<b>Notice Deadline for Claims Administrator to Send Summary Notice</b>	Within 15 days after receiving the Settlement Class list from Defendant
<b>Motion for Attorneys' Fees, Reimbursement of Costs and Expenses and Service Award to be Filed by Class Counsel</b>	At Least 14 days before the Objection Deadline
<b>Postmark Deadline for requests for Exclusion (Opt-Out) or Objections</b>	75 days after entry of this Preliminary Approval Order
<b>Postmark/Filing Deadline for Filing Claims</b>	90 days after Notice Deadline
<b>Motion for Final Approval to be Filed by Class Counsel</b>	At Least 14 days before the Final Approval Hearing
<b>Final Approval Hearing</b>	No earlier than 100 days after entry of this Preliminary Approval Order

COLE & VAN NOTE  
ATTORNEYS AT LAW  
555 12<sup>TH</sup> STREET, SUITE 1725  
OAKLAND, CA 94607  
TEL: (510) 891-9800

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DONE AND ORDERED** in Oakland, California on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
**HONORABLE KANDIS A. WESTMORE**  
**UNITED STATES MAGISTRATE JUDGE**

# Exhibit E

1 Scott Edward Cole, Esq. (S.B. #160744)  
Laura Grace Van Note, Esq. (S.B. #310160)  
2 Cody Alexander Bolce, Esq (S.B. #322725)  
**COLE & VAN NOTE**  
3 555 12<sup>th</sup> Street, Suite 1725  
Oakland, California 94607  
4 Telephone: (510) 891-9800  
Facsimile: (510) 891-7030  
5 Email: sec@colevannote.com  
Email: lvn@colevannote.com  
6 Email: cab@colevannote.com  
Web: www.colevannote.com  
7

8 Attorneys for Representative Plaintiff

9  
10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

13 JAMI ZUCCHERO, individually and on  
behalf of all others similarly situated,  
14  
Plaintiff,  
15 vs.  
16 HEIRLOOM ROSES, INC.,  
17  
Defendant.

**Case No. 4:22-cv-00068-KAW**

**CLASS ACTION**

**[PROPOSED] ORDER AND JUDGMENT:**

- (1) GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT;**
- (2) AWARDING ATTORNEYS' FEES AND COSTS TO CLASS COUNSEL; AND**
- (3) AWARDING A SERVICE AWARD TO THE REPRESENTATIVE PLAINTIFF**

**Date:**  
**Time:**  
**Judge:** **Hon. Kandis A. Westmore**  
**Ctrm:**

22  
23  
24  
25  
26  
27  
28

1 This matter came before the United States District Court for the Northern District of  
2 California, Department \_\_\_\_, at \_\_\_\_ a.m./p.m. on \_\_\_\_\_, with Cole & Van Note appearing  
3 as counsel for Representative Plaintiff Jami Zucchero, individually, and on behalf of the Settlement  
4 Class, and Davis Wright Tremaine LLP appearing for Defendant Heirloom Roses, Inc. The Court,  
5 having carefully considered the briefs, argument of counsel and all matters presented to the Court  
6 and good cause appearing, hereby **GRANTS** Plaintiff’s Motion for Final Approval of Class Action  
7 Settlement.

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the  
10 Motion, the Court makes the following findings:

- 11 1. All terms used herein shall have the same meaning as defined in the proposed  
12 Settlement Agreement (“Agreement”).
- 13 2. This Court has jurisdiction over the subject matter of the above-captioned litigation  
14 and over all Parties to this Litigation, including the Settlement Class.

15 **Preliminary Approval of the Settlement**

16 3. On \_\_\_\_\_, the Court granted preliminary approval of a class-wide  
17 settlement. At this same time, the Court approved certification of a provisional Settlement Class  
18 for settlement purposes only.

19 **Notice to the Plaintiff Class**

20 4. In compliance with the Preliminary Approval Order, the Class Notice was emailed  
21 to the Settlement Class Members on or about \_\_\_\_\_. Emailing the Class Notice was the best  
22 notice practicable under the circumstances and was reasonably calculated to communicate actual  
23 notice of the Litigation and the proposed settlement to the Settlement Class. To the extent emails  
24 were returned as undeliverable, a replacement Class Notice was sent via first class mail to the  
25 Settlement Class Members at their last known addresses to the extent that information was known  
26 to Heirloom Roses, Inc. \_\_\_\_\_ Notices were undeliverable following both methods of attempted  
27 service.

28



1           5.       According to the Claims Administrator, there are \_\_\_\_ members of the Settlement  
2 Class who will receive a benefit from a Settlement Claim. The deadline for opting out has passed  
3 and \_\_\_\_\_ Settlement Class Members have done so. \_\_\_\_ Settlement Class Members  
4 submitted a timely written objection and \_\_\_\_\_ appeared in person at the Final Approval  
5 Hearing to object. There was an adequate interval between mailing of the Notice and the deadline  
6 to permit Settlement Class members to choose what to do and act on their decision.

7                   **Fairness of the Settlement**

8           6.       The Agreement is entitled to a presumption of fairness. *Leonardo's Pizza by the*  
9 *Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044, 125 S.Ct. 2277, 161 L. Ed. 2d 1080 (2005) (a  
10 “presumption of fairness, adequacy and reasonableness may attach to a class settlement reached  
11 in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”)  
12 (quoting Manual for Complex Litigation, Third § 30.42 (1995)). There has been no collusion  
13 between the parties in reaching the proposed settlement.

14           7.       Plaintiff’s investigation and discovery were sufficient to allow the Court and  
15 counsel to act intelligently.

16           8.       Counsel for both parties are experienced in similar data breach class action  
17 litigation. All counsel recommended approval of the Agreement.

18           9.       The consideration to be given to the Settlement Class Members under the terms of  
19 the Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the  
20 claims asserted in this action and is fair, reasonable and adequate compensation for the release of  
21 Settlement Class Members’ claims, given the uncertainties and risks of the litigation and the delays  
22 which would ensue from continued prosecution of the action.

23           10.      The proposed Agreement is approved as fair, adequate and reasonable and is in the  
24 best interests of Settlement Class Members.

25                   **Attorneys’ Fees/Expenses**

26           11.      The Agreement provides for (and Class Counsel seeks) an award of up to \$198,500  
27 to Class Counsel as attorneys’ fees and expenses in this action. This was negotiated separately  
28 from and will be paid separately and independently from the monies paid to Settlement Class

1 Members for their claims. As such, this award will not affect the amount of money any Settlement  
2 Class Member will receive for their claims.

3 12. The award of attorneys' fees and reimbursement of litigation expenses are  
4 reasonable, in light of the contingent nature of Class Counsel's work, the substantial amount of  
5 work actually performed such that Class Counsel will not receive a windfall incommensurate with  
6 the time and effort dedicated to the case, the risks assumed, the results achieved by Class Counsel  
7 and due to the significant amount of work Class Counsel anticipates post-final approval of the  
8 settlement.

9 **Service Award**

10 13. The Agreement provides for a Service Award of up to \$1,500 for Representative  
11 Plaintiff Jami Zucchero, subject to the Court's approval. This was negotiated separately from and  
12 will be paid separately and independently from the monies paid to Settlement Class Members for  
13 their claims. The Court finds this Service Award reasonable in light of the risks and burdens  
14 undertaken by Representative Plaintiff in this action and for her time and effort in bringing and  
15 prosecuting this matter on behalf of the Settlement Class.

16 **IT IS HEREBY ORDERED THAT:**

17 1. The Settlement Class is certified for the purposes of settlement only. The Settlement  
18 Class is hereby defined as:

19 All individuals within the United States whose name and personal payment card  
20 information was potentially exposed to unauthorized third-parties as a result of the  
21 Data Security Incident that occurred between approximately February to October  
22 of 2021.

23 2. The Agreement is hereby finally approved as fair, reasonable, adequate and in the  
24 best interest of the Settlement Class.

25 3. Class Counsel are awarded attorneys' fees in the amount of \$198,500, inclusive of  
26 litigation costs. Class Counsel shall not seek or obtain any other compensation or reimbursement  
27 from Defendant, Plaintiff or members of the Settlement Class.

28 4. Payment of a Service Award in the amount of \$1,500 to Plaintiff Jami Zucchero.

1           5.       A Final Judgment in this action is hereby entered and this shall constitute a  
2 Judgment for purposes of Federal Rule of Civil Procedure Rule 54.

3           6.       This Final Judgment shall bind each Settlement Class Member and shall operate as  
4 a full release and discharge of the Released Claims against the Released Parties. All rights to appeal  
5 the Final Judgment have been waived. This Final Judgment and Final Approval Order shall have  
6 *res judicata* effect and bar all Settlement Class Members from bringing any action asserting  
7 Settlement Class Members' Released Claims under the Agreement.

8           7.       The Agreement and Settlement are not an admission by Defendant, nor is this Final  
9 Approval Order a finding, of the validity of any claims in this action or of any wrongdoing by  
10 Defendant. Neither this Final Approval Order, this Final Judgment, the Agreement, nor any  
11 document referred to herein, nor any action taken to carry out the Agreement is, may be construed  
12 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability  
13 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or  
14 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of,  
15 an admission or concession with regard to the denials or defenses by Defendant and shall not be  
16 offered in evidence in any action or proceeding against Defendant in any court, administrative  
17 agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this  
18 Final Approval Order, this Final Judgment, the Agreement or any related agreement or release.  
19 Notwithstanding these restrictions, any of the Released Parties may file in this case or any other  
20 proceeding this Final Approval Order, this Final Judgment, the Agreement or any other papers and  
21 records on file in the case as evidence of the Settlement to support a defense of *res judicata*,  
22 collateral estoppel, release or other theory of claim or issue preclusion or similar defense as to the  
23 Released Claims.

24           8.       Notice of entry of this Final Approval Order and Final Judgment shall be given to  
25 Class Counsel on behalf of Plaintiff and all Settlement Class Members. It shall not be necessary to  
26 send notice of entry of this Final Approval Order and Final Judgment to individual Settlement  
27 Class Members, but it shall be posted on the settlement website. The time for any appeal shall run  
28

1 from service of notice of entry of the Final Approval Order and Final Judgment by Class Counsel  
2 on Defendant.

3 9. After entry of this Order and Final Judgment, the Court shall retain jurisdiction to  
4 construe, interpret, implement and enforce the Agreement and this Judgment, to hear and resolve  
5 any contested challenge to a claim for settlement benefits and to supervise and adjudicate any  
6 dispute arising from or in connection with the distribution of settlement benefits.

7 10. In the event the Settlement does not become final and effective in accordance with  
8 the terms of the Settlement Agreement or is terminated, cancelled or otherwise fails to become  
9 effective for any reason, then this Final Approval Order and Final Judgment, and all orders entered  
10 in connection herewith, shall be rendered null and void and shall be vacated.

11 11. A Compliance Hearing is hereby set for \_\_\_\_\_ a.m./p.m. in Department \_\_\_\_\_  
12 of this Court. At least ten court days before the Compliance Hearing, Class Counsel shall submit  
13 a Case Management Conference Statement, accompanied by a Declaration from the Claims  
14 Administrator (including a summary accounting identifying the distributions made, the number  
15 and value of any uncashed checks, the status of any unresolved issues and any other matters  
16 appropriate to evaluate the effectiveness and completeness of the distribution).

17  
18 **DONE AND ORDERED** in Oakland, California on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

19  
20  
21 **HONORABLE KANDIS A. WESTMORE**  
22 **UNITED STATES MAGISTRATE JUDGE**  
23  
24  
25  
26  
27  
28