

## **Settlement Agreement and Release**

This Settlement Agreement and Release (“Agreement”), is entered into by and between the National Federation of the Blind, the LightHouse for the Blind and Visually Impaired of San Francisco, Jim Barbour, Cathy Gaten, Allison Depner, and Lisamaria Martinez (“Claimants”), and DineEquity, Inc. (“Respondent”). Individually, the foregoing are referred to as a “Party” and collectively referred to as the “Parties.”

### **SECTION 1 – BACKGROUND**

- 1.1. E la Carte (“Vendor”) is an entity that contracts directly (“Vendor Contract”) with Applebee’s franchisees who choose to purchase/lease Electronic Tabletop Tablets from the Vendor for customer use at the franchisee’s Applebee’s restaurant(s). Under a license agreement with Vendor, DineEquity licenses the use of the Applebee’s trademark to the Vendor for use on these Electronic Tabletop Tablets in its restaurant(s) is based on that franchisee’s contractual relationship with the Vendor.
- 1.2. On December 2, 2015, Claimants wrote to DineEquity to express concerns that the services offered to sighted customers via Electronic Tabletop Tablets at franchised Applebee’s restaurants throughout California and the U.S. are inaccessible to blind customers in violation of state and federal law.
- 1.3. To avoid uncertainty and the costs of potential litigation, the Parties entered into a Structured Negotiations Agreement and have worked collaboratively to address Complainants’ concerns.
- 1.4. By this Agreement, the Parties intend to settle any disputes regarding DineEquity’s obligations regarding the accessibility of the services provided via Electronic Tabletop Tablets at Applebee’s restaurants throughout California and the U.S.
- 1.5. By entering into this Agreement, DineEquity does not admit violation of any laws or wrongdoing of any kind.
- 1.6. The Parties agree that it is in their best interests and in the public interest to voluntarily enter into this Agreement. The Parties have therefore agreed as follows:

### **SECTION 2 – DEFINITIONS**

- 2.1. The following terms shall have the following meanings in this Agreement. All other terms shall be interpreted according to their plain and ordinary meaning.
  - 2.1.1. “Claimants’ Counsel” means Disability Rights Advocates, with offices at 2001 Center Street, 4th Floor, Berkeley, California 94704; Brown, Goldstein Levy LLP, with offices at 120 E Baltimore St #1700, Baltimore, Maryland 21202; and TRE Legal Practice with offices at 4226 Castanos Street, Fremont, California 94536.

2.1.2. “Effective Date” means the date of the last signature on this Agreement.

2.1.3. “Electronic Tabletop Tablets” are any tablets provided by Vendor at franchised Applebee’s restaurants for customers to use to browse menus, order, and pay for food and/or drinks in the restaurant.

### **SECTION 3 – LICENSE AGREEMENT ELECTRONIC TABLETOP TABLET ACCESSIBILITY PROVISIONS**

3.1. DineEquity has stated its intent to enter into a new License Agreement in 2017 with Vendor for Electronic Tabletop Tablets, with a term through November 2023 (unless terminated earlier pursuant to terms of license agreement) (“2017 Vendor License Agreement”). This 2017 Vendor License Agreement shall state that:

3.1.1. All Electronic Tabletop Tablets that Vendor provides to each Applebee’s franchisee that enters into a Vendor Contract for the purchase/lease Electronic Tabletop Tablets from the Vendor after the Effective Date must meet the accessibility specifications of Paragraph 3.1.4 (“Accessible Electronic Tabletop Tablets”).

3.1.2. No later than three months after the Effective Date, Vendor will update all pre-existing Electronic Tabletop Tablets that remain in use at franchisee restaurants to make all the non-visual user interface features described in Paragraph 3.1.4 of this Agreement available.

3.1.3. Vendor may periodically update all Electronic Tabletop Tablets in use at such franchisee restaurants as needed to provide or enhance accessibility.

3.1.4. The Accessible Electronic Tabletop Tablets can be operated via a non-visual user interface that allows blind and low-vision customers to independently do at least the following, but only so long as the following functions are available to sighted customers:

3.1.4.1. Browse menu options

3.1.4.2. Order drinks, appetizers, entrees, and dessert—as well as customize toppings and dishes

3.1.4.3. Engage with the “call server” function, designed to notify a server that his/her presence at the table has been requested for assistance

3.1.4.4. Pay their bills, including being able to split a check among more than one person

3.1.4.5. Select tip amounts

- 3.1.4.6. Review their bills to verify amounts charged
  - 3.1.4.7. Pay for interactive video games and provide access to such games for sighted members of their party during their meals (this does not require the games to have functionality to allow blind or low-vision persons to engage with or play such games that are accessible to sighted persons)
  - 3.1.4.8. Activate the non-visual user interface independently
- 3.1.5. Accessible Electronic Tabletop Tablets shall be capable of providing audio output of the non-visual user interface via the built-in speakers on the device as well as via wired headphones. The Vendor may update existing Electronic Tabletop Tablets that lack a headphone jack for wired headphones to enable Bluetooth pairing.
- 3.1.6. Vendor will affix to the Accessible Electronic Tabletop Tablets a label with the term “audio” in print and Braille to alert blind customers regarding activation of the non-visual user interface.
- 3.1.7. If the Vendor provides training to the franchisees who choose to use the Electronic Tabletop Tablets, the Vendor shall provide training to franchisees on how to use the Accessible Electronic Tabletop Tablets, including the features described in Paragraph 3.1.4.
- 3.2. DineEquity shall provide written notice to franchised Applebee’s restaurants on or shortly after the Vendor Contracts for the devices are circulated to franchisees that: (1) franchisees may turn on the audio capabilities of the Accessible Electronic Tabletop Tablets through the use of built-in speakers without violating their respective franchise agreement, and (2) franchisees must reserve Accessible Electronic Tabletop Tablets for use by blind customers and distribute them for use by sighted customers only when all other Electronic Tabletop Tablets are in use.
- 3.3. Claimants agree that DineEquity’s obligations under this Agreement are limited to those listed in this Paragraph 3. Claimants acknowledge that an Applebee’s franchisee may choose not to use in its restaurant(s) any Electronic Tabletop Tablets.
- 3.4. If DineEquity modifies or supplements the 2017 Vendor License Agreement in any manner and at any time, it shall not alter the language or effect of the provisions outlined in Paragraphs 3.1.1 through 3.1.7.

## **SECTION 4 – MONETARY SETTLEMENT**

- 4.1. The monetary settlement will be paid by Vendor and a franchisee, pursuant to a separate agreement, in full compensation for attorneys’ fees and costs to Claimants’ Counsel for its work on this matter through the Effective Date and for user testing conducted by Claimants. Only upon receipt of monetary payment to Claimants’ Counsel and Claimants by Vendor and a franchisee will DineEquity

be deemed to bear no responsibility for further payment to Claimants' Counsel, Claimants, or any other entity in relation with this matter.

## **SECTION 5 – RELEASE TERMS AND WARRANTIES**

- 5.1. **Release of Claims.** In consideration for the promises made above, commitments and undertakings set forth in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, Claimants, on behalf of themselves and any of their agents, employees, representatives, assigns, heirs, executors, trustees, partners and attorneys, and each of them (collectively, the “Releasing Persons”), shall be deemed to have jointly and severally released and discharged DineEquity, its affiliates and related entities, together with its and their respective past, present, and future officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parent entities, subsidiary entities, partners, insurers, contractors, independent consultants, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, (collectively, the “Released Parties”), from any and all claims, causes of action, suits, demands, rights, liabilities, damages, lawsuits, legal proceedings, losses, fees, costs and expenses of any kind whatsoever, whether known or unknown, including, but not limited to, any monetary, injunctive or declaratory relief relating thereto, and for reimbursement of attorney’s fees, costs and expenses, relating to the accessibility of Electronic Tabletop Tablets provided at any Applebee’s franchise for blind and low vision customers, but not including claims related to the enforcement of this Agreement (collectively, the “Released Claims”). This release expressly applies only to claims regarding the accessibility of Electronic Tabletop Tablets licensed under the 2017 Vendor Licensing Agreement, including but not limited to all claims arising from or relating to the ADA, any federal, state, or local law, statute or ordinance, rule or principle of common law or doctrine in law or equity, known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, actual or potential. Claimants, on their own behalves and on behalf of the other Releasing Persons, acknowledge that Released Claims may include claims that are presently unknown, and that the release contained in this Agreement is intended to and does discharge all Released Claims, whether now asserted or unasserted, known or unknown, which arise out of or in connection with the Released Claims.
- 5.2. Claimants agree that they will make no claim in the future for equitable relief or remedial measures to be undertaken as a result of any alleged discrimination and/or other wrongful conduct by DineEquity or any Released Party relating to the accessibility of the Electronic Tabletop Tablets licensed under the 2017 Vendor Licensing Agreement and provided at any Applebee’s franchise for blind and low-vision customers that could have been made in this matter. This release does not apply to any claims related to the enforcement of this Agreement.

- 5.3. Claimants expressly and knowingly waive and relinquish any and all rights that they each has or might have relating to the Released Claims under California Civil Code § 1542 (and under any and all other statutes or common law principles of similar effect) which reads as follows:

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

- 5.4. Claimants acknowledge that they may hereafter discover facts different from, or in addition to, those which they now believe to be true with respect to the Released Claims above. On their own behalves and on behalf of all of the Releasing Persons, Claimants agree that the foregoing release and waiver shall be and remain effective in all respects notwithstanding such different or additional facts or discovery thereof, and that this Agreement contemplates the extinguishment of all such Released Claims. By executing this Agreement, Claimants each acknowledge the following: (a) she/he is represented by counsel of her/his own choosing; (b) she/he has read and fully understands the provisions of California Civil Code § 1542; and (c) she/he has been specifically advised by her counsel of the consequences of the above waiver and this Agreement generally.
- 5.5. **Full and Knowing Waiver.** Each Party consulted with an attorney of its/his/her choice and executed this Agreement with a complete understanding of its legal effect. The Parties understand that executing this Agreement expressly waives all of the aforementioned rights and binds them to the terms of this Agreement.
- 5.6. **Capacity of the Parties.** The Parties warrant that each has the full power, capacity, and authority to enter into this Agreement, and that no claim, right, demand, action, or cause of action was assigned to an entity who is not a party to this Agreement.
- 5.7. **Binding on Parties.** The Parties warrant that if the facts upon which this Agreement is based are found to be different from the facts now believed to be true, this Agreement will remain binding and effective. The Parties expressly accept and assume the risk of the possibility that differences exist and agree that this Agreement shall remain binding and effective.
- 5.8. **Voluntary Action by Parties.** The Parties enter into this Agreement knowingly and voluntarily, to avoid the expense of litigation.
- 5.9. **Compromise.** This Agreement is the result of a compromise and shall not be construed as an admission by DineEquity or any of the other Released Parties of any liability, wrongdoing, or responsibility on its or their part or on the part of its and their predecessors, successors, parents, subsidiaries, affiliates, members, attorneys, officers, directors, or employees. Indeed, DineEquity and the other Released Parties expressly deny any such liability, wrongdoing, or responsibility.

## SECTION 6 – GENERAL PROVISIONS

- 6.1. **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matters discussed herein, and supersedes all prior or contemporaneous discussions, communications, or agreements, expressed or implied, written or oral, by or between the Parties. This Agreement cannot be amended without the written and signed approval of all Parties.
- 6.2. **Headings.** The section headings in this Agreement are for the Parties' convenience and shall not be deemed a part of the various terms and provisions of this Agreement, nor used to limit the construction thereof.
- 6.3. **Governing Law.** This Agreement shall be governed and construed in accordance with the domestic laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California; provided, however, that to the extent that federal law expressly applies to any specific issue or question, federal law shall be applicable to said issue or question.
- 6.4. **Binding on Successors.** The provisions of the Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns, heirs, executors, administrators, parent entities, subsidiaries, and affiliates of the respective Parties.
- 6.5. **Waiver; Severability.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provisions hereof and no waiver shall be effective unless made in writing. The paragraphs and provisions of this Agreement are severable. In the event that any provision of this Agreement shall be determined to be illegal or otherwise unenforceable, such provision shall be severed and the balance of the Agreement shall continue in full force and effect.
- 6.6. **Notices.** Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by registered or certified mail or overnight courier to the addresses below or to such other addresses as may be specified in writing by any Party.

6.6.1. To Claimants or Claimants' Counsel:

Disability Rights Advocates  
2001 Center Street, Fourth Floor  
Berkeley, CA 94704  
Attn: Rebecca Williford

The National Federation of the Blind, Inc.  
200 East Wells Street at Jernigan Place  
Baltimore, Maryland 21230

Attn: Marc Maurer, Director of Legal Policy

With copies to:

Brown, Goldstein & Levy LLP  
120 East Baltimore Street, Suite 1700  
Baltimore, Maryland 21202  
Attn: Jessica P. Weber, Esq.

TRE Legal Practice  
4226 Castanos Street  
Fremont, CA 94536  
Attn: Timothy Elder, Esq.

6.6.2. To DineEquity, Inc.:

Seyfarth Shaw LLP  
400 Capitol Mall, Suite 2350  
Sacramento, California 95814-4428  
Attn: Kristina Launey, Esq.

6.7. **Dispute Resolution.** Any dispute or disagreement between the Parties related to this Agreement and any enforcement of this Agreement shall be resolved according to the following procedure:

6.7.1. **Meet and Confer.** Prior to bringing any action, suit or proceeding in connection with any dispute or disagreement arising out of this Agreement or to enforce this Agreement, the concerned Party shall notify the other Party or Parties in accordance with Paragraph 6.6 of this Agreement. Within fourteen (14) business days from notification of any such dispute or disagreement, the Parties shall meet and confer in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution mutually satisfactory to the Parties.

6.7.2. **Mediation.** If the Parties are unable to resolve the dispute or disagreement in good faith through the meet and confer process within thirty (30) calendar days after the notice referred to in Paragraph 6.7.1 has been delivered, DineEquity, Claimants and/or Claimants' Counsel may bring the dispute or disagreement to a mutually acceptable mediator.

6.7.3. **Submission to Court.** If mediation fails to resolve the dispute or disagreement, any of the Parties may submit the matter to a court of competent jurisdiction through initiation of a lawsuit to secure all remedies available by law.

6.7.4. **Fees and Costs for Dispute Resolution.** The parties may seek to recover reasonable fees and costs in connection with the dispute resolution process, including submission to court, in accordance with applicable law.

6.8. **Counterparts.** This Agreement may be executed in one or more counterparts, and authentic facsimile signatures or electronic signatures shall be deemed to be original signatures for all purposes. All executed counterparts, and each of them, shall be deemed to be one and the same instrument.

6.9. **Press Release:** If Claimants intend to issue a written press release regarding this Agreement, they shall first send the draft press release to DineEquity for its review and approval, which DineEquity shall not unreasonably withhold.

**IN WITNESS WHEREOF**, the Parties, being duly authorized, have executed this Agreement as of the Effective Date:

**For DineEquity, Inc.:**

\_\_\_\_\_  
By:

\_\_\_\_\_  
DATE

Name and Title



**For National Federation of the Blind:**

\_\_\_\_\_  
By: Mark A. Riccobono, President

\_\_\_\_\_  
DATE November 16, 2017

Name and Title

\_\_\_\_\_

**For Lighthouse for the Blind and Visually Impaired:**

\_\_\_\_\_  
By:

\_\_\_\_\_  
DATE

Name and Title

6.8. **Counterparts.** This Agreement may be executed in one or more counterparts, and authentic facsimile signatures or electronic signatures shall be deemed to be original signatures for all purposes. All executed counterparts, and each of them, shall be deemed to be one and the same instrument.

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**IN WITNESS WHEREOF**, the Parties, being duly authorized, have executed this Agreement as of the Effective Date:

**For DineEquity, Inc.:**

By:  11/15/17  
DATE

Name and Title VP, Associate General Counsel

**For National Federation of the Blind:**

By: \_\_\_\_\_ DATE \_\_\_\_\_

Name and Title

**For Lighthouse for the Blind and Visually Impaired:**

By: \_\_\_\_\_ DATE \_\_\_\_\_

Name and Title

6.8. **Counterparts.** This Agreement may be executed in one or more counterparts, and authentic facsimile signatures or electronic signatures shall be deemed to be original signatures for all purposes. All executed counterparts, and each of them, shall be deemed to be one and the same instrument.

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**IN WITNESS WHEREOF**, the Parties, being duly authorized, have executed this Agreement as of the Effective Date:

**For DineEquity, Inc.:**

By: \_\_\_\_\_

DATE \_\_\_\_\_

Name and Title



**For National Federation of the Blind:**

By: Mark A. Riccobono, President

November 16, 2017

DATE

Name and Title

BRYAN BASHIN, CEO

**For Lighthouse for the Blind and Visually Impaired:**

By: Bryan Bashin

11/29/17  
DATE

Name and Title

DocuSigned by:  
  
Jim Barbour

11/22/2017  
DATE

See attached

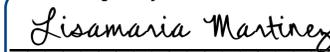
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Cathy Gaten

\_\_\_\_\_  
DATE

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Allison Depner

\_\_\_\_\_  
DATE

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Lisamaria Martinez

11/28/2017  
DATE

**For Disability Rights Advocates:**



11/16/17

By: \_\_\_\_\_  
Rebecca Williford, Senior Staff Attorney

DATE

Name and Title

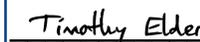
**For Brown Goldstein Levy LLP:**

  
By: \_\_\_\_\_  
Jessica P. Weber, Partner

11/16/17  
DATE

Name and Title

**For TRE Legal Practice:**

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By: \_\_\_\_\_  
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DATE

timothy Elder Attorney

Name and Title

  
Cathy Gaten

11/16/17  
DATE

*Allison Depner*  
Allison Depner

11/16/17

DATE