

Settlement Agreement and Release

This Settlement Agreement and Release (“Agreement”), deemed in effect as of the Effective Date, is entered into by and between the National Federation of the Blind, the LightHouse for the Blind and Visually Impaired of San Francisco (“LightHouse”), Jim Barbour, Cathy Gatlen, Allison Depner, and Lisamaria Martinez (collectively, “Claimants”), on one hand, and E la Carte, Inc. (“E la Carte”), on the other. Each of the foregoing are also referred to as a “Party” and collectively referred to as the “Parties.”

Recitals

WHEREAS, Claimants allege that E la Carte is a business entity that provides data processing services (the “Presto System”) to restaurants nationwide through the use of Electronic Tabletop Tablet devices, including certain Applebee’s restaurants, that such services are inaccessible to blind customers, and that the failure of E la Carte’s restaurant operator customers to make those services accessible to blind customers violates California’s Unruh Civil Rights Act, California Civil Code § 51 *et seq.*, and the California’s Disabled Persons Act, California Civil Code §§ 54 *et seq.*;

WHEREAS, E la Carte denies any wrongdoing or violation of law and denies that such allegations apply to E la Carte;

WHEREAS, to avoid uncertainty and the costs of potential litigation, the Parties entered into a Structured Negotiations Agreement (effective as of April 18, 2016, as amended) and have worked collaboratively since April 2016 to resolve potential claims concerning the accessibility for blind customers of services offered through the use of E la Carte Electronic Tabletop Tablet devices at Applebee’s restaurants throughout California and the U.S.;

WHEREAS, E la Carte has demonstrated to Claimants and Claimants’ Counsel enhancements to E la Carte’s Presto System and is, as of the Effective Date, continuing to work collaboratively with Claimants and Claimants’ Counsel to remediate accessibility barriers in such tablets;

WHEREAS, by virtue of this Agreement, the Parties intend to settle Claimants’ concerns regarding the accessibility for blind customers of E la Carte’s Presto Systems to the extent such systems are deployed in restaurants (including but not limited to Applebee’s restaurants in California and other states in the United States of America), pursuant to contracts with E la Carte;

WHEREAS, by entering into this Agreement, E la Carte is not admitting any wrongdoing or violation of law.

SECTION 1 – DEFINITIONS

The following terms shall have the following meanings with respect to this

Agreement. All other terms shall be interpreted according to their plain and ordinary meaning:

- 1.1. "Claimants" means and refers to (a) National Federation of the Blind with offices at 200 E Wells Street at Jernigan Place, Baltimore, MD 21230; (b) the LightHouse for the Blind and Visually Impaired, 1155 Market Street, Tenth Floor, San Francisco, CA 94103; and (c) Jim Barbour, Cathy Gatlen, Allison Depner, and Lisamaria Martinez, individual residents of the state of California.
- 1.2. "Claimants' Counsel" means and refers to 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.
- 1.3. "Effective Date" means the date of the last signature on this Agreement.
- 1.4. "Electronic Tabletop Tablets" or "Electronic Tabletop Tablet Devices" means and refers to E la Carte's currently delivered, legacy "Presto" and its next generation "PrestoPrime EMV Android Tablets," as well as any other tablet devices that E la Carte may offer to restaurants for use by its customers to, among other things, browse menus, order, and pay for food and/or drinks.
- 1.5. "Legacy Tablets" means and refers to E la Carte's "Presto" Android Tablets that lack physical headphone input jacks and that are currently in use at E la Carte's customers' retail locations as of the Effective Date.
- 1.6. "Next Generation Tablets" means and refers to E la Carte's "PrestoPrime EMV Android Tablets" with built-in headphone input jacks, as well as any other tablet devices that E la Carte may offer to customers in the future to, among other things, browse menus, order, and pay for food and/or drinks.

SECTION 2 – ACCESSIBILITY FEATURES

2.1. Non-visual User Interface Accessibility Features in all Electronic Tabletop Tablets

E la Carte shall include in all the Next Generation Tablets that it offers to its restaurant operator customers and in all Legacy Tablets currently in use by its customers, a non-visual user interface, to ensure that blind customers are afforded the same private and independent access to services offered through Electronic Tabletop Tablets as is afforded to sighted customers via a visual interface, with substantially similar ease of use. Private access on Next Generation Tablets refers to the privacy afforded through headphones on Next Generation tablets. Private access on Legacy Tablets refers to the privacy afforded by using Bluetooth headsets and is contingent on the technical feasibility as set forth in section 2.4 below. The non-visual user interface shall be a standard feature set included on all Electronic Tabletop Tablets. All such non-visual features utilize and depend upon the Google TalkBack programmatic interface that is available for use on Android devices. E la Carte shall ensure

that the non-visual user interface described below is included on all of its customers' Electronic Tabletop Tablets, whether Legacy or Next Generation, according to the timelines listed below. However, Claimants and Claimants' Counsel acknowledge and agree that E la Carte's existing customers with Legacy Tablets decide if and when to deploy Next Generation Tablets, and that E la Carte, as a vendor to such customers, does not make such decisions. E la Carte shall not produce or sell any Legacy Tablets to its customers after the Effective Date.

So long as the following functions are available to sighted customers, the non-visual user interface for all Electronic Tabletop Tablets must enable blind and low-vision customers to:

- 2.1.1. browse menu options;
- 2.1.2. order drinks, appetizers, entrees, and dessert – as well as customize toppings and dishes;
- 2.1.3. engage with the “call server” function, which is designed to notify a server that his/her presence at the table has been requested for assistance;
- 2.1.4. pay their bill, including being able to split a check among more than one person;
- 2.1.5. select tip amounts;
- 2.1.6. review their bills to verify amounts charged;
- 2.1.7. pay for games that may be included on Electronic Tabletop Tablets, thereby providing access to such games for sighted members of their party during their meals (*provided, however, for the avoidance of doubt, that E la Carte shall not be required to enhance such games to include the ability for blind or low-vision persons to engage with or play such games that are accessible to sighted persons*); and
- 2.1.8. activate the non-visual user interface independently.

2.2. Activating the Non-Visual User Interface on Legacy Tablets

E la Carte shall remotely update or modify the software on Legacy Tablets for all of its customers so that a blind person can independently activate the non-visual user interface by using a custom gesture to engage the audio through the internal speakers on the tablets. E la Carte shall determine the appropriate gesture through user testing and feedback with Claimants as described in Section 2.7 of this Agreement.

2.3. Activating Non-Visual User Interface on Next Generation Tablets

E la Carte shall ensure that a blind person can independently activate the non-visual user interface of the Next Generation Tablets through both of the following methods: (1) plugging in headphones (that such blind and low-vision customers

or the restaurants provide) into a headphone jack to engage the audio through the headphones; and (2) using a custom gesture without headphones to engage the audio on the external speakers of the tablets. E la Carte shall determine the appropriate gesture through user testing and feedback with Claimants as described in Section 2.7 of this Agreement.

2.4. Non-Visual User Interface Bluetooth Option on Legacy Tablets

E la Carte further agrees to, within three months of the Effective Date, determine the feasibility of enabling blind customers to use Bluetooth audio with the non-visual interface on Legacy Tablets. E la Carte shall determine this feasibility through user testing and feedback with Claimants as described in Section 2.7 of this Agreement. If such use is feasible and technically possible, E la Carte shall develop the capacity for blind customers to independently pair their own or a restaurant-provided Bluetooth headset to Legacy Tablets for use with the non-visual user interface by remotely updating its customers Legacy Tablets within nine months of the Effective Date.

2.5. Braille Label

E la Carte shall affix Braille labels to its Next Generation Tablets so that the labels read "audio" in print and Braille to alert blind customers regarding activation of the non-visual user interface.

2.6. Timeline for Modifications

E la Carte shall make the non-visual user interface features described in this agreement available on all of its customers Electronic Tabletop Tablets, whether Legacy Tablets or Next Generation Tablets, within 3 months of the Effective Date, except for the specified Bluetooth features noted above.

2.7. User Testing

Before E la Carte publicly releases the non-visual user interface accessibility features described above, E la Carte shall first schedule and conduct at least two user testing sessions conducted through the LightHouse for the Blind and Visually Impaired of San Francisco to test the effectiveness of the non-visual user interface. E la Carte shall pay the LightHouse \$150 per user per session and an hourly honorarium agreed upon by LightHouse and E la Carte to each user. One of these user testing sessions shall be held at the San Francisco offices of the LightHouse and one shall be held at an Applebee's location of E la Carte's choosing unless the parties agree otherwise. LightHouse shall give preference first to Jim Barbour, Cathy Gaten, Allison Depner, and Lisamaria Martinez and then to any member of the National Federation of the Blind when selecting users for testing and shall coordinate with the Office of the President of the National Federation of the Blind in identifying local candidates. E la Carte shall compile, in writing, all user feedback received through this process and

share with Claimants' Counsel. E la Carte shall make best efforts to incorporate the feedback it receives from the user testing into the development of its non-visual user interface. E la Carte shall advise Claimants' Counsel within 21 calendar days after completion of all user testing, in writing, as to which user feedback E la Carte intends to incorporate, as well as any user feedback E la Carte does not intend to incorporate. To the extent E la Carte does not incorporate feedback, Claimants reserve the right to meet and confer with E la Carte about the feasibility of incorporating such feedback.

2.8. Maintenance of Electronic Tabletop Tablet Devices

2.8.1. To the extent E la Carte has control over maintenance of Electronic Tabletop Tablet devices deployed to restaurants, including Applebee's restaurants, during the term of this Agreement, E la Carte shall take reasonable steps to ensure that the non-visual user interface accessibility features of those devices as described in this Agreement are maintained in operable condition for use by blind and low-vision individuals.

2.8.2. E la Carte shall, to the extent that it provides technical support services to its restaurant operator customers, answer questions from such restaurant operator customers related to the functionality of the accessibility features of its Electronic Tabletop Tablet Devices.

2.9. New Features Added to Electronic Tabletop Tablet Devices

To the extent E la Carte adds new user capabilities to its Electronic Tabletop Tablet devices (and controls the source code to those user capabilities) during the term of this Agreement, such features shall also have a non-visual user interface to make it possible for blind customers to privately and independently access such capabilities. The Parties agree that in no case shall E la Carte be required to add non-visual user interface capabilities to third-party games or entertainment applications that run on Electronic Tabletop Tablets, nor to third party applications that E la Carte's restaurant operator customers direct E la Carte to include on Electronic Tabletop Tablets.

2.10. Instructions/Training Regarding Accessibility Features

To the extent E la Carte provides instructions and/or training to its restaurant operators, it shall ensure that such instructions and/or training include instructions and/or training regarding the use of the non-visual interface by blind customers. E la Carte makes no commitment that such training or instruction will be delivered at individual restaurants.

SECTION 3 – RELEASE TERMS AND WARRANTIES

3.1. **Release of Claims.** In consideration for the promises made herein, and except for the obligations of E la Carte contained in this Agreement, and the provisions, terms, covenants, and promises contained in this Agreement as well as any actions taken to enforce the terms of this Agreement, Claimants, and each of

their heirs, executors, successors, assigns, administrators, agents, and representatives hereby fully release, acquit, and discharge any claims against E la Carte or any of its present, former, or future successors, assigns, officers, directors, administrators, executors, employees, affiliates, attorneys, and each of them (hereinafter a "Released Party," collectively the "Released Parties"), regarding the accessibility for blind customers to the services E la Carte offers via Electronic Tabletop Tablets at Applebee's restaurants or other restaurants through the Term of this Agreement. Except for claims relating to blind customers' ability to pay for games as described in Section 2.1.7 of this Agreement, this release does not cover any claims regarding the accessibility of games, entertainment applications or other third-party applications. This release applies only to E la Carte and does not apply to any third-parties. This release does not apply to any claims related to the enforcement of this Agreement

- 3.2. **Full and Knowing Waiver.** Each Party to this Agreement has consulted with an attorney of its choice and executed this Agreement with a complete understanding of its legal effect. The Parties understand that executing this Agreement binds them to the terms of this Agreement.
- 3.3. **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.
- 3.4. **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 such differences may exist and agree that this Agreement shall remain binding and effective.
- 3.5. **Voluntary Action by Parties.** The Parties enter into this Agreement knowingly and voluntarily.

SECTION 4 – ATTORNEYS' FEES AND COSTS

- 4.1. E la Carte agrees to pay \$200,000.00 to Claimants' Counsel representing attorneys' fees and costs incurred by Claimants through the Effective Date. Payment will be made within 14 days of the Effective Date of this Agreement to the trust account of Brown Goldstein & Levy, LLP, 120 E. Baltimore Street, Suite 1700, Baltimore, MD 21202, attention: Jessica P. Weber, or as otherwise directed by Claimants' Counsel.

SECTION 5 – GENERAL PROVISIONS

- 5.1. **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 with

respect to such subject matters. Without limiting the generality of the foregoing, upon the execution of this Agreement by the Parties, the Structured Negotiations Agreement, and all rights and obligations of the parties thereto, shall terminate. This Agreement cannot be amended without the written and signed approval of all Parties

- 5.2. **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.
- 5.3. **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.
- 5.4. **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, provided however, that parties to this agreement who are natural persons shall have no right to assign this agreement to any third party.
- 5.5. **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.
- 5.6. **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.

5.6.1. 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

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.

5.6.2. To E la Carte, Inc.:

E la Carte, Inc.
810 Hamilton Street
Redwood City, CA 94063
Attn: CEO

- 5.7. **Press Release.** If Claimants intend to issue a written press release regarding this Agreement, they shall first send the draft press release to E la Carte for its review and approval, which E la Carte shall not unreasonably withhold.
- 5.8. **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.
- 5.9. **Term.** The term of this Agreement shall be 3 years from the Effective Date.

SECTION 6 – DISPUTE RESOLUTION

- 6.1. **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:
- 6.1.1. **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 Section 5.6 of this Agreement. Within fifteen (15) 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.
- 6.1.2. **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 5.6 has been delivered, E la Carte, Claimants and/or Claimants' Counsel may bring the dispute or disagreement to a mutually acceptable mediator.

- 6.1.3. **Arbitration.** If the Parties are unable to resolve the dispute or disagreement through the meet and confer and/or mediation methods described above, the Parties agree that any and all disputes, claims or disagreements, including interpretations or enforcement under or pursuant to this Agreement (collectively, "Dispute") shall be resolved exclusively by means of final and binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules.
- 6.1.4. **Fees and Costs for Dispute Resolution.** Fees and Costs for dispute resolution shall be awarded in accordance with applicable law.

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

For E la Carte, Inc:

By:

DATE

Name and Title

For National Federation of the Blind:

Mark A. Riccobono

November 27, 2017

By: Mark A. Riccobono, President

DATE

Name and Title

For Lighthouse for the Blind and Visually Impaired:

By:

DATE

Name and Title

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

For E la Carte, Inc:

By: Randy Kies DATE 11-20-17

Name and Title

RANDY KIES VP - PARTNER SUCCESS

For National Federation of the Blind:

By: _____ DATE _____

Name and Title

For Lighthouse for the Blind and Visually Impaired:

By: _____ DATE _____

Name and Title

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

For E la Carte, Inc:

By: Randy Kies DATE 11-20-17

Name and Title

RANDY KIES VP - PARTNER SUCCESS

For National Federation of the Blind:

By: _____ DATE _____

Name and Title

BRYAN BASHIN, CEO

For Lighthouse for the Blind and Visually Impaired:

By: Bryan Bashin DATE 11/29/17

Name and Title

DocuSigned by:
Jim Barbour
Jim Barbour

11/22/2017
DATE

DocuSigned by:
Cathy Gaten
Cathy Gaten

11/23/2017
DATE

DocuSigned by:
Allison Depner
Allison Depner

11/29/2017
DATE

DocuSigned by:
Lisamaria Martinez
Lisamaria Martinez

11/28/2017
DATE

For Disability Rights Advocates:

Rebecca S Williford

11/30/2017

By: Rebecca Williford, Senior Staff Attorney

DATE

Name and Title

For Brown Goldstein Levy LLP:

By: _____

DATE

Name and Title

For TRE Legal Practice:

DocuSigned by:
Timothy Elder
By: 086418A2DA5C4B4...

11/27/2017
DATE

Timothy Elder Attorney
Name and Title

Jim Barbour

DATE

Cathy Gaten

DATE

Allison Depner

DATE

Lisamaria Martinez

DATE

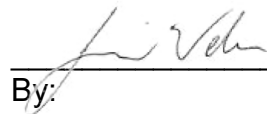
For Disability Rights Advocates:

By:

DATE

Name and Title

For Brown Goldstein Levy LLP:



By:

11/27/17

DATE

Name and Title Jessica P. Weber, Partner

For TRE Legal Practice:

By:

DATE

Name and Title