

SETTLEMENT AGREEMENT

The District of Columbia (the “District”), by and through its Office of the Attorney General (“OAG”), and Drizly, LLC (“Drizly”) (collectively with the District, the “Parties”) hereby enter into this Settlement Agreement, and agree as follows:

I. THE PARTIES

1. WHEREAS, the Attorney General of the District of Columbia is authorized to enforce the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*, the District’s False Claims Act (“FCA”), D.C. Code § 2-381.01, *et seq.*, and the District of Columbia Tax Code, D.C. Code § 47-101, *et seq.*

2. WHEREAS, Drizly, LLC is a Delaware limited liability company with its headquarters and principal place of business at 501 Boylston Street, Boston, MA 02116. Drizly connects consumers of legal drinking age with local licensed retailers and facilitates the sale and delivery of alcoholic beverages.

II. RECITALS

3. WHEREAS, the District alleges that Drizly engaged in unlawful trade practices under the CPPA in violation of D.C. Code § 28-3904(e), (f), and (f-1), in that Drizly’s tipping practices (1) made misleading representations to District Consumers regarding how their tips were distributed to drivers, (2) omitted the material fact from District Consumers that their tips frequently did not change driver pay, and (3) made ambiguous representations to District Consumers that failed to adequately disclose that their tips frequently did not change driver pay.

4. WHEREAS, the District also alleges that Drizly violated the District’s FCA and tax laws by knowingly avoiding its obligation to pay the following sales and use taxes owed to the District: (a) sales and use taxes on orders for alcoholic beverages processed on the Drizly Platform,

which Drizly owed under the District Marketplace Facilitator Law, *see* D.C. Code § 47–2002.01a, and (b) sales and use taxes on delivery fees and service fees charged to District Consumers.

5. WHEREAS, Drizly denies that it has violated any provision of District law, including the CPPA, the FCA, and District tax laws. Drizly maintains that it communicated clearly with District Consumers through the Drizly Platform, and relied on written guidance to the alcohol industry issued in 2014 and 2020 by the District of Columbia Alcoholic Beverage Control Board prohibiting online third-party providers from collecting, receiving, or retaining any funds or fees that stem from the sale of alcoholic beverages by Retail Partners as defined herein. In its terms of service, Drizly required all Retail Partners that contracted to use the Drizly platform to comply with all District laws, including tip regulations and tax laws. Moreover, Drizly did not receive any portion of the tips or taxes, which were directly remitted to the Retail Partners by the payment processor for proper distribution to Drivers (in the case of tips) or submission to the District (in the case of taxes).

6. WHEREAS, on April 1, 2022, Drizly began collecting and remitting sales and use taxes to the District Office of Tax and Revenue (“OTR”) as a marketplace facilitator.

7. WHEREAS, on May 18, 2022, Drizly remitted \$465,833.05 to the District, which it represents constitutes all outstanding sales and use taxes owed to the District for consumer service fees and delivery fees assessed on Retail Partners’ sales on the Drizly platform from Drizly’s inception to March 31, 2022.

8. WHEREAS, the Parties wish to avoid the time, expense, and inconvenience of any potential litigation, and to resolve any and all disputes and potential legal claims based on the conduct described in these Recitals. Nothing contained in this Settlement Agreement is or may be

construed to be an admission by Drizly of any violation of law or regulation, any other matter of fact or law, or any liability or wrongdoing.

III. DEFINITIONS

The following terms used in this Agreement have the following meanings:

1. **“District Consumer”** means a consumer, as that term is defined in D.C. Code § 28–3901(2), who places or has placed an order (a) from within the geographic boundaries of the District of Columbia or (b) to an address located within the District of Columbia.

2. **“District Marketplace Facilitator Law”** means D.C. Code § 47–2002.01a.

3. **“Drizly Platform”** means any website or mobile-, tablet-, or other internet-based application owned by Drizly through which consumers may place orders for goods or services with local licensed retailers.

4. **“Retail Partner”** means a licensed beer, wine, or liquor store that sells or has sold goods or services to District Consumers via the Drizly Platform.

5. **“Eligible Driver”** means a delivery driver who, pursuant to Drizly records, during the period between January 1, 2019 and the Effective Date, delivered on behalf of a Retail Partner goods ordered through the Drizly Platform in the District of Columbia. No owner or partial owner of a Retail Partner may be deemed an “Eligible Driver.”

6. **“District Payment Amount”** means the amount that Drizly will pay to the District of Columbia under the terms of this Settlement Agreement, exclusive of any payment of costs of the District’s investigation.

7. **“Driver Payment Amount”** means the amount that Drizly will pay to Eligible Drivers under the terms of this Settlement Agreement.

8. **“Effective Date”** means the last date upon which any party executes this Settlement Agreement.

9. **“Notice/Claim Form”** means the form providing Eligible Drivers with notice of this settlement and the form Eligible Drivers must complete to submit a claim. The Notice/Claim Form is appended as Appendix A to this Settlement Agreement.

10. **“Drizly Sales Percentage”** means the average percentage of Retail Partner sales conducted through the Drizly platform based on Drizly’s visibility into Retail Partners’ inventory management systems. For the purposes of this Agreement, this figure shall be 24%.

11. **“Taxes Paid Attributable to Drizly”** means the aggregate amount of taxes paid to the District according to OTR records by Drizly’s top twenty highest grossing Retail Partners multiplied by the Drizly Sales Percentage.

12. **“Retail Partner Tax Owed”** means the taxes owed to the District for sales through the Drizly platform for a given Retail Partner using the Applicable Tax Rate.

13. **“Applicable Tax Rate”** means 10.25%, which is the applicable sales tax for alcoholic beverages sold for off-premises consumption pursuant to D.C. Code § 47-2002(a)(3A).

14. **“Relevant Time Period”** means April 1, 2019 through March 31, 2022.

15. **“Retail Partner Notice Letter”** means the letter providing Retail Partners with notice of this settlement and directing Retail Partners to provide Eligible Drivers with a copy of the Notice/Claim Form. The Retail Partner Notice Letter is appended as Appendix B to this Settlement Agreement.

16. “**OTR Release**” means the form through which Retail Partners will authorize OTR to provide sales and use tax return information to Drizly and the OAG. The OTR Release is appended as Appendix C to this Settlement Agreement.

IV. INJUNCTIVE TERMS

1. Drizly agrees that it will not engage in any act or practice that violates the CPPA.
2. Drizly agrees that it will comply with the District’s tax laws, including by (a) collecting and remitting sales and use taxes on delivery fees and service fees charged to District Consumers, and (b) collecting and remitting sales and use taxes in accordance with the District’s Marketplace Facilitator Law.
3. Drizly agrees that it will not file claim(s) for refund of sales and use taxes paid for the Relevant Time Period, and Drizly shall withdraw any protest as to any such payments it has made to the District as of the Effective Date.
4. Drizly agrees that it will cease describing any gratuity funds collected through the Drizly Platform as “tips” and that a gratuity option will not be preselected (*i.e.*, the Consumer will have to affirmatively select a gratuity option before any gratuity will be charged). Drizly agrees to change its disclosures regarding the option to add a gratuity through the Drizly Platform to conform with District law by including the following disclosure on the checkout page: “All money designated as gratuities goes directly to Drizly Retail Partners who have sole discretion over whether and how funds may be distributed to their team members, including delivery drivers.” Drizly agrees that the disclosure language in the preceding sentence will appear prominently adjacent to the option to provide a gratuity, without requiring consumers to click, tap, or take any other action to view the disclosure.

V. PAYMENT TERMS

A. Driver Payments

Drizly agrees to make a payment of one million nine hundred fifty thousand dollars and zero cents (\$1,950,000.00) to an account with a third-party claims administrator approved by the District within 45 days of the Effective Date, to be distributed to Eligible Drivers as set forth below:

1. *Claims Administrator.* Within fifteen (15) days of the Effective Date, Drizly shall retain a third-party claims administrator (the “Administrator”) to administer a claims procedure to distribute the Driver Payment Amount to Eligible Drivers. Drizly shall pay for all expenses related to the Administrator and claims procedure.

2. *Compensation.* Eligible Drivers who make a claim during the claims period and sign a release with Drizly will be compensated at a rate of \$6.75 per delivery made between January 1, 2019 and the Effective Date. Payment will be made regardless of the method by which Eligible Drivers were compensated for deliveries by the Retail Partners (*e.g.*, through hourly wages, direct payment of tips, tip sharing, or a flat rate per delivery). Drizly’s records will control whether a driver is eligible for compensation; provided, however, that where the Settlement Administrator has reason to doubt the accuracy or completeness of Drizly’s records with respect to the identity or the apportionment of deliveries among drivers for a particular Retail Partner such that the entitlement to payment of a claimant asserting they are an Eligible Driver is uncertain, the Administrator shall attempt to obtain additional information from such claimant to determine the claimant’s eligibility for payment and an estimated number of deliveries for purposes of

determining the amount of payment to that claimant. Payments shall be made by PayPal, Venmo, direct deposit or check; checks shall be valid for 180 days after the date of issuance.

3. *Claims Notice.* Drizly maintains records of all Eligible Drivers. Drizly and the Administrator will make reasonable efforts to provide notice of the claims process and a copy of the Notice/Claim Form (“Appendix A”) to all Eligible Drivers within forty-five (45) days after the Effective Date using available contact information previously provided by Eligible Drivers and/or Retail Partners to Drizly. As used herein, “reasonable efforts” shall include at least all of the following:

- a. *Public Notice.* Within forty-five (45) days after the Effective Date, the Administrator shall disseminate public notice of the Claims Procedure. The public notice shall be disseminated through the creation of a website providing notice about the Claims Procedure with the ability to submit claims through the website.
- b. *Retail Partner Notice.* Within fifteen (15) days after the Effective Date, Drizly shall provide all Retail Partners with the Retail Partner Notice Letter (“Appendix B”), which directs Retail Partners to provide Eligible Drivers with copies of the Notice/Claim Form (“Appendix A”). Drizly will also provide the Administrator with the contact information for its Retail Partners. The Claims Administrator shall make reasonable attempts to obtain Eligible Driver contact information from Drizly’s Retail Partners.
- c. *Eligible Driver Notice.* Within forty-five (45) days after the Effective Date, Drizly shall provide the Administrator and the District with the names and all contact information they possess for all Eligible Drivers, including any email address(es), mailing address(es), and/ or phone number(s). The District may provide the Administrator with additional contact information for potential Eligible Drivers. The Administrator shall make reasonable attempts to obtain mailing addresses for all Eligible Drivers. The Administrator shall provide notice to all Eligible Drivers by all available contact methods, including phone call, text message, email and mail within sixty (60) days after the Effective Date. Such notice will, at a minimum, include or link to the claims website and the Notice/Claim Form (“Appendix A”).
- d. *Skip Tracing.* If the Administrator’s initial attempts to contact any Eligible Driver are unsuccessful because of a telephone number that is inoperable, a

live person indicating the administrator dialed the wrong number, or a text message, an email, or a mailed notice that is undeliverable, the Administrator shall conduct a skip trace search to locate last-known contact information for that Eligible Driver. Within 30 days of receiving any notices returned as undeliverable, or of any other indication that its initial attempt to contact an Eligible Driver has failed, the Administrator will conduct a skip trace and then attempt to contact the Eligible Driver using such additional contact information identified by such skip tracing.

4. *Release.* The release Eligible Drivers will sign in order to receive payment is included on the Notice/Claim Form (“Appendix A”).

5. *Claims Period.* The claims period will remain open for a period of six months after the Administrator fully effects notice to the Eligible Drivers as provided in subparagraph V.A.3.c.

6. *Administrator Reporting.* The Administrator shall provide to the Parties monthly updates concerning its issuing of notice to Eligible Drivers, any skip tracing efforts it has undertaken, and any claims that have been filed with it. Once eligibility determinations have been made and/or payments have been issued, the Administrator shall provide the Parties with a report concerning those determinations and payments, including the basis on which any claim was denied by the Administrator. The Administrator will have the duty to comply with reasonable information requests from either District or Drizly.

7. *Final Disbursement of Funds.* Any funds that remain unclaimed in the account established by Drizly with the Administrator 180 days following the conclusion of this claims period will revert to Drizly. If, however, the total amount of compensation required to be paid to Eligible Drivers exceeds \$1,950,000, Drizly will fund any overage.

B. Payment to the District for Settlement

Drizly agrees to pay to the District the District Payment Amount under the following terms:

1. *Initial Payment Held in Escrow.* Within forty-five (45) days of the Effective Date of this Settlement Agreement, Drizly shall deposit a sum of \$3,299,085.02 in an escrow account (the “Escrow Amount”) pending the final determination of the District Payment Amount.

2. *Calculation of District Payment Amount.* The District Payment Amount shall be the sum of the Low-Volume Amount and the High-Volume Amount, as calculated by the method set out in subparagraphs V.B.3-V.B.4.

3. *Low-Volume Retail Partners.* Drizly agrees to a Low-Volume Amount of \$650,001.84 for the Marketplace Facilitator Taxes that the District alleges should have been collected for the 65 Retail Partners with the lowest grossing sales on the Drizly Platform. This amount includes \$526,535.69, which Drizly represents is the Marketplace Facilitator Tax liability for these 65 Retail Partners during the Relevant Time Period, plus interest computed under the Applicable Tax Rate and D.C. Code § 47-4201.

4. *High-Volume Retail Partners.* For the remaining 20 Retail Partners with the highest grossing sales on the Drizly platform (a “High Volume Partner”), Drizly agrees to pay to the District a High-Volume Amount, which is the sum of the Components A and B, to be calculated as described in subparagraphs V.B.4.a and V.B.4.b. Drizly has the burden of furnishing an executed copy of the OTR Release to the District so that Drizly and the District can determine the amount of taxes that each High-Volume Partner paid to the District for the Relevant Time Period.

a. *Payment Amounts for High-Volume Partners Without OTR Releases (“Component A”).* For each High-Volume Retail Partner for which Drizly does not provide to the District an executed OTR Release, Drizly agrees to pay to the District the full amount of Marketplace Facilitator Taxes owed based on Drizly’s sales records. This amount shall be calculated by multiplying the Applicable Tax Rate by the Retail Partner Tax Owed for the Relevant Time Period, plus interest computed under D.C. Code § 47-4201. The sum of any amounts calculated under this subparagraph shall be referred to as Component A.

- b. *Payment Amounts for High-Volume Partners With OTR Releases (“Component B”)*.
 - i. For each High-Volume Partner for which Drizly provides to the District an executed OTR Release (“Appendix C”), the District will obtain from OTR the Retail Partner’s sales and use tax return information to determine the aggregate amount of sales and use taxes paid by that Retail Partner for the Relevant Time Period.
 - ii. For each High-Volume Partner, The Taxes Paid Attributable to Drizly (TPAD) will equal the product of the aggregate amount of sales and use taxes paid by the Retail Partner for the relevant tax periods and 24% (i.e., the Drizly Sales Percentage). The TPAD will be compared to the Retail Partner Tax Owed (RPTO) (i.e., the tax liability for that Retail Partner’s Drizly sales) for the Relevant Time Period. For each High-Volume Partner where the TPAD amount is less than the RPTO amount, Drizly agrees to pay to the District the amount of the unpaid taxes. This amount shall be calculated by first taking the difference between the TPAD amount and the RPTO amount, and then calculating interest on that amount under D.C. Code § 47-4201. The sum of any amounts calculated under this subparagraph shall be referred to as Component B.

5. *Final Disbursement of Funds.* Within forty-five (45) days of the final determination of the District Payment Amount, the \$3,299,085.02 held in escrow shall be released and Drizly shall pay the final District Payment Amount to the District. If the final District Payment Amount is less than the \$3,299,085.02 held in escrow, then any remaining funds will be returned to Drizly. If the final District Payment Amount is more than the \$3,299,085.02 held in escrow, then Drizly agrees to pay to the District the additional amount by which the final District Payment Amount exceeds \$3,299,085.02. All payments to the District shall be made by wire payment or check made out to “D.C. Treasurer” and delivered to the Office of the Attorney General consistent with instructions from OAG.

C. Payment to the District for Costs of Investigation.

Within 45 days of the Effective Date, Drizly agrees to pay to the District, in addition to and separate from the District Payment Amount described above in section V.B, an amount of \$750,000.00 as an agreed-upon compensation to the District for its costs of investigation.

VI. RELEASE

This Settlement Agreement finally disposes of all claims by the District related to the Recitals in Section II, as set forth below. Upon payment of all amounts due under the Settlement Agreement, the District will release Drizly from all claims concerning tips, marketplace facilitator taxes, or delivery fee or service fee sales or use taxes that OAG or the Office of Tax and Revenue asserted or could have asserted under the Consumer Protection Procedures Act, D.C. Code § 28-3901, *et seq.*, the District's False Claims Act, D.C. Code § 2-381.01, *et seq.*, and the District of Columbia Tax Code, D.C. Code § 47-101, *et seq.* (including claims the District could have asserted through the Office of the Chief Financial Officer or other agencies) based on the facts and time periods set forth in the recitals in Section II of this Agreement. The Attorney General, as the chief legal officer for the District of Columbia, binds the District and releases these claims on behalf of the District.

VII. GENERAL PROVISIONS

1. The District is agreeing to this Settlement Agreement based on representations Drizly has made as to its practices during the relevant period from January 2019 through the Effective Date and any changes it has made to those practices since the District initiated its investigation. If the District learns that Drizly's representations have been false, incomplete, or inaccurate, the District may seek to modify or enforce this Settlement Agreement against Drizly

and seek additional relief for Eligible Drivers under section V.A and for the District under section V.B of this Agreement.

2. Unless otherwise set forth above, Drizly agrees to implement all changes required by this Settlement Agreement within ninety (90) days of the Effective Date.

3. This Settlement Agreement represents the full and complete terms of the agreement entered by the Parties.

4. In entering into this Settlement Agreement, the parties are neither extinguishing any rights otherwise available to District Consumers, nor creating any right not otherwise available under the laws of the District of Columbia. Drizly may seek the releases included on the Notice/Claim Form (“Appendix A”) from Eligible Drivers in consideration for payment of Driver Payment Amounts.

5. The Superior Court of the District of Columbia has jurisdiction over this Settlement Agreement and the Parties for the purpose of enforcing this Settlement Agreement. The Parties may agree in writing, through their counsel, to an extension of any time period in this Settlement Agreement without a court order.

6. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature will be deemed to be, and will have the same force and effect, as an original signature.

7. All notices and correspondence sent pursuant to this Settlement Agreement will be provided to the following address via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

For the District of Columbia:

James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th Street NW, 10th Floor
Washington, DC 20001
Graham.Lake@dc.gov

For Drizly:

Jacqueline Flug
General Counsel
Drizly, LLC
501 Boylston Street
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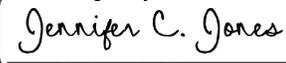
8. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement will not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, will have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

9. If any clause, provision, or section of this Settlement Agreement will, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability will not affect any other clause, provision, or section of this Settlement Agreement, and this Settlement Agreement will be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

10. Drizly will ensure that all current and future personnel having final decision-making authority with respect to the subject matter of this Settlement Agreement are informed of the requirements set forth in this Settlement Agreement.

FOR THE DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General for the District of Columbia

DocuSigned by:


Date: 11/14/2022

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Jennifer Jones
Deputy, Public Advocacy Division

DocuSigned by:


Date: 11/12/2022

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James Graham Lake
Section Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th Street NW, 10th Floor
Washington, D.C. 20001

Attorneys for the District of Columbia

FOR DRIZLY, LLC

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7E5323FED5DB442

Date: 11/10/2022

James Cory Rellas, CEO
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