

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

LOUISIANA MUNICIPAL POLICE  
EMPLOYEES' RETIREMENT SYSTEM, on  
behalf of itself and all other similarly situated  
shareholders of Landry's Restaurants, Inc., and  
derivatively on behalf of nominal defendant  
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.  
SCHEINTHAL, KENNETH BRIMMER,  
MICHAEL S. CHADWICK, MICHAEL  
RICHMOND, JOE MAX TAYLOR, FERTITTA  
HOLDINGS, INC., FERTITTA ACQUISITION  
CO., RICHARD LIEM, FERTITTA GROUP,  
INC. and FERTITTA MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**STIPULATION OF SETTLEMENT OF REMAINING CLAIMS**

This Stipulation of Settlement of Remaining Claims (the "Stipulation") is submitted pursuant to Delaware Chancery Court Rule 23. This Stipulation is entered into by and among plaintiff Louisiana Municipal Police Employees' Retirement System ("LMPERS" or "Plaintiff") in the above-captioned consolidated shareholder litigation (the "Action"), on behalf of itself and the 2008 Transaction Subclass (as defined below), and defendant Tilman J. Fertitta ("Fertitta"); defendants Fertitta Acquisition Co. and Fertitta Holdings, Inc. (together, the "2008 Fertitta Entities"); defendants Fertitta Merger Co. and Fertitta Group Inc. (together, the "2009 Fertitta Entities," and collectively with Fertitta and the 2008 Fertitta Entities, the "Fertitta Defendants"); defendants Kenneth Brimmer, Michael S. Chadwick, Michael Richmond, and Joe Max Taylor

(the “Outside Director Defendants”); defendants Steven L. Scheinthal and Richard H. Liem (together with the “Outside Director Defendants,” the “Director Defendants”); and nominal defendant Landry’s Restaurants Inc. (“Landry’s” or the “Company”), by and through their respective counsel. Subject to the approval of the Court, this Stipulation is intended to settle and release all remaining claims asserted or that could have been asserted against Defendants in the Second Amended Verified Class Action and Derivative Complaint filed in the Action on May 21, 2010, and every prior version of the Complaint (collectively, the “Complaint”), that were not settled and released pursuant to the Stipulation of Partial Settlement dated June 22, 2010 (the “Stipulation of Partial Settlement”).

WHEREAS, on June 16, 2008, Fertitta and the 2008 Fertitta Entities agreed to acquire Landry’s for \$21 per share and to pay a \$24 million reverse termination fee if they did not close the merger transaction in the absence of a contractual termination right (the “\$21 merger agreement” or “2008 merger agreement”);

WHEREAS, on September 13, 2008, Hurricane Ike made landfall in Texas, causing damage to a number of Landry’s properties;

WHEREAS, on October 7, 2008, Landry’s issued a press release stating that, among other things, the debt financing required to complete the 2008 merger agreement was “in jeopardy”;

WHEREAS, on October 17, 2008, the terms of the \$21 merger agreement were amended to lower the acquisition price that Fertitta agreed to pay to \$13.50 per share and by lowering the reverse termination fee to \$15 million;

WHEREAS, on January 11, 2009, the \$21 merger agreement was terminated without payment of any termination fee;

WHEREAS, on February 5, 2009, Plaintiff filed a complaint in Delaware Chancery Court styled *Louisiana Municipal Police Employees' Retirement System v. Tilman J. Fertitta, et al.* asserting breach of fiduciary duty claims against the Fertitta and the 2008 Fertitta Entities, the Outside Director Defendants, Steven L. Scheinthal, and Landry's concerning the amendment and subsequent termination of the \$21 merger agreement and a derivative claim on behalf of Landry's against the Board for failure to seek payment of the \$24 million reverse termination fee;

WHEREAS, on July 28, 2009, former Vice Chancellor Lamb denied the defendants' motion to dismiss the Complaint, and discovery thereafter commenced;

WHEREAS, on November 3, 2009, Fertitta and the 2009 Fertitta Entities agreed to acquire Landry's for \$14.75 per share (the "\$14.75 merger agreement" or "2009 merger agreement");

WHEREAS, on November 10, 2009, Plaintiff supplemented its complaint, asserting breach of fiduciary duty claims against Fertitta and the current Landry's Board concerning the 2009 merger agreement;

WHEREAS, on January 28, 2010, Plaintiff filed an amended complaint asserting breach of fiduciary duty claims against: (i) the Fertitta Defendants concerning the 2008 and 2009 merger agreements; (ii) the Director Defendants concerning the 2008 merger agreement; (iii) Fertitta and the Board concerning the 2009 merger agreement; (iv) a claim against Fertitta for unjust enrichment; and (v) a derivative claim against the Board for failure to seek payment of the \$24 million reverse termination fee;

WHEREAS, on March 12, 2010, the parties conducted a full-day mediation session with retired United States District Judge Nicholas H. Politan, which did not resolve any of the claims;

WHEREAS, on May 21, 2010, Plaintiff filed the Second Amended Verified Class Action and Derivative Complaint asserting breach of fiduciary duty claims against: (i) the Fertitta Defendants concerning the 2008 and 2009 merger agreements; (ii) the Director Defendants concerning the 2008 merger agreement; (iii) Fertitta and the Board concerning the 2009 merger agreement; (iv) a claim for unjust enrichment against Fertitta; (v) a derivative claim against the Board for failure to seek payment of the \$24 million reverse termination fee; and (vi) a derivative breach of contract claim against Fertitta and Fertitta Acquisition Co. for failure to pay the \$24 million reverse termination fee;

WHEREAS, on May 28, 2010, the Fertitta Defendants and the Outside Director Defendants filed motions to dismiss Plaintiff's Complaint by arguing that: (i) SLUSA precluded Plaintiff from pursuing Counts I, II, III and IX, (ii) Counts I, II and IX were based on a fiduciary duty that Delaware law does not recognize, and (iii) Count III should be dismissed because it is a derivative rather than a direct claim;

WHEREAS, on June 18, 2010, Plaintiff filed an opposition brief responding to Defendants' motions to dismiss, and on July 2, 2010, Defendants filed reply briefs in support of their motions to dismiss;

WHEREAS, on June 22, 2010, the parties entered into a Stipulation of Partial Settlement providing for the settlement of the claims asserted against Defendants in Counts IV through VIII of the Complaint only;

WHEREAS, on July 7, 2010, the parties conducted a full-day mediation session with retired United States District Judge Nicholas H. Politan, which resulted in the parties reaching an agreement in principle to settle the remaining claims asserted against Defendants in the

Complaint. The parties memorialized the principal terms of the settlement in a Term Sheet executed on July 15, 2010;

WHEREAS, Plaintiff has prosecuted the case, including defending against Defendants' motion to dismiss, reviewing more than 600,000 pages of documents, taking more than a dozen depositions, engaging in expert discovery and prosecuting multiple discovery motions before the Court;

WHEREAS, Defendants deny all wrongdoing and this Stipulation shall not be construed or deemed to be evidence of, or an admission or concession on the part of, any Defendant with respect to any claim, or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have asserted;

WHEREAS, this Stipulation shall not be construed or deemed to be a concession by Plaintiff of any infirmity in the claims it has asserted;

WHEREAS, Plaintiff's Counsel have conducted an investigation relating to the claims and the underlying events and transactions alleged in the Action. Plaintiff's Counsel have analyzed the evidence adduced during their investigation and pretrial discovery and have researched the applicable law with respect to the claims of Plaintiff and the 2008 Transaction Subclass against Defendants and the potential defenses thereto;

WHEREAS, based upon their investigation and pre-trial discovery as set forth above, Plaintiff and Plaintiff's Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiff and the 2008 Transaction Subclass, and in their best interests, and have agreed to settle and release the remaining claims asserted or that could have been asserted in the Complaint that were not previously settled and released pursuant to the Stipulation of Partial Settlement pursuant to the terms and provisions of this Stipulation, after

considering (a) the substantial benefits that Plaintiff and the members of the 2008 Transaction Subclass will receive from the Settlement, (b) the attendant risks of litigation, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation; and

NOW THEREFORE, without any admission or concession on the part of Plaintiff of any lack of merit of the remaining claims asserted in the Complaint whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses of Defendants to such claims whatsoever, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective attorneys, subject to approval of the Court pursuant to Delaware Chancery Court Rule 23, in consideration of the benefits flowing to the Parties hereto from the Settlement, that all Settled Claims as against the Released Parties and all Settled Defendants' Claims shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) "2008 Transaction Subclass" means, for purposes of this Settlement only, all persons and entities who held shares of Landry's common stock at any point between September 17, 2008 and January 11, 2009, inclusive. Excluded from the 2008 Transaction Subclass are: Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry's and the Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a

controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

(b) “2008 Transaction Subclass Member” means a person or entity that is a member of the 2008 Transaction Subclass.

(c) “2008 Transaction Subclass Period” means, for the purposes of this Settlement only, the period between September 17, 2008 and January 11, 2009, inclusive.

(d) “Authorized Claimant” means a 2008 Transaction Subclass Member who submits a timely and valid Proof of Claim Form to the Claims Administrator that is accepted by the Court for payment from the Net Settlement Fund.

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit C, that a 2008 Transaction Subclass Member must complete should that 2008 Transaction Subclass Member seek to share in a distribution of the Net Settlement Fund.

(f) “Claimant” means a person or entity that submits a Claim Form to the Claims Administrator seeking to share in the proceeds of the Settlement Fund.

(g) “Claims Administrator” means the firm to be retained by Plaintiff and Plaintiff’s Counsel, subject to the approval of the Court, which shall administer the Settlement.

(h) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(i) “Court” means the Court of Chancery of the State of Delaware.

(j) “Defendants” means the Fertitta Defendants, the Outside Director Defendants, Steven L. Scheinthal, Richard H. Liem, and nominal defendant Landry’s.

(k) “Defendants’ Counsel” means: the law firms of Richards, Layton & Finger, P.A. and Baker Botts L.L.P., on behalf of the Fertitta Defendants, Steven L. Scheinthal and Richard H. Liem; Morris, Nichols, Arsht & Tunnell LLP and Fulbright & Jaworski L.L.P., on behalf of the Outside Director Defendants; and Young Conaway Stargatt & Taylor LLP, Ashby & Geddes and Haynes and Boone, LLP, on behalf of Landry’s.

(l) “Defendant Notice Costs” means all fees, costs, and expenses related to publishing the Summary Notice and mailing the Notice to current Landry’s stockholders, which as set forth in paragraph 16 below, shall be paid by Defendants or their successor(s)-in-interest.

(m) “Effective Date” means the first date by which all of the events and conditions specified in paragraph 31 below have occurred and have been met.

(n) “Escrow Account” means the interest-bearing escrow account maintained by the Escrow Agent to hold the Settlement Fund, which account shall be under the control of Plaintiff’s Counsel with one of Defendants’ Counsel to serve as a co-signor for expenditures from the Escrow Account until such time as the Effective Date shall occur.

(o) “Escrow Agent” means the escrow agent identified in the Escrow Agreement governing the Escrow Account, who shall be chosen by Plaintiff’s Counsel. Defendants shall have the right to approve the Escrow Agent, with such approval not to be unreasonably withheld.

(p) “Escrow Agreement” means the agreement setting forth the terms under which the Escrow Agent shall maintain the Escrow Account. Defendants shall have the right to approve the Escrow Agreement, with such approval not to be unreasonably withheld.

(q) “Fertitta Entities” means Fertitta Holdings, Inc., Fertitta Acquisition Co., Fertitta Group, Inc. and Fertitta Merger Co.

(r) “Final,” means when the last of the following with respect to the Order and Final Judgment approving the Stipulation, substantially in the form of Exhibit E attached hereto, shall occur: (i) the expiration of the time to file a motion to alter or amend the Order and Final Judgment under the Delaware Court’s Rules without any such motion having been filed or, if filed, such motion having been denied; (ii) the time in which to appeal the Order and Final Judgment has passed without any appeal having been taken; (iii) if an appeal is taken, immediately after the determination of that appeal, provided that the Parties hereto are permitted to consummate the Settlement substantially in accordance with the terms of this Stipulation; and (iv) if the Court enters an order and final judgment substantially different from the form attached hereto as Exhibit E (an “Alternative Judgment”) and the Settlement is not terminated, the date that such Alternative Judgment becomes final as defined in parts (i) to (iii) above and no longer subject to appeal. For purposes of this paragraph, an appeal shall include any petition for writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of attorneys’ fees and litigation expenses or approval of the Plan of Allocation.

(s) “Individual Defendants” means Fertitta, the Outside Director Defendants, Steven L. Scheinthal, and Richard H. Liem.

(t) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Plaintiff Notice and Administration Costs; and (iii) any attorneys’ fees and/or expenses awarded by the Court.

(u) “Notice” means the Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Awards of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit B.

(v) “Order and Final Judgment” or “Judgment” means the order and final judgment, substantially in the form attached hereto as Exhibit E, to be entered by the Court approving the Settlement and dismissing the remaining claims asserted, and releasing the remaining claims that could have been asserted, against Defendants in the Complaint that were not settled and released pursuant to the Stipulation and Partial Settlement.

(w) “Party” means any one of, and “Parties” means all of, the parties to this Stipulation, namely, Defendants and Plaintiff, on behalf of itself and the 2008 Transaction Subclass Members.

(x) “Plaintiff’s Counsel” means: the law firms of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A.

(y) “Plaintiff Notice and Administration Costs” means all fees, costs, and expenses related to providing Notice to members of the 2008 Transaction Subclass who no longer hold shares of Landry’s common stock and all fees, costs and expenses related to the administration of the Settlement, which as set forth in paragraph 17 below, shall be paid from the Settlement Fund.

(z) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund.

(aa) “Released Parties” means any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, counsel, insurers, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of the Defendants.

(bb) “Scheduling Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement, scheduling a hearing on the Settlement and directing notice thereof to the 2008 Transaction Subclass.

(cc) “Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, individual or derivative in nature, including both known claims and Unknown Claims, (i) that have been asserted in any count of the Complaint or (ii) that could have been asserted in any forum by Plaintiff (on behalf of itself and/or Landry’s) or any 2008 Transaction Subclass Member which (even in part) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to any count of the Complaint and which (even in part) arise out of Plaintiff’s or the 2008 Transaction Subclass Members’ status as stockholders, buyers, or sellers of Landry’s common stock at any point between September 17, 2008 and January 11, 2009, inclusive (except for claims to enforce the Settlement).

(dd) “Settled Defendants’ Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or

un-liquidated, at law or in equity, matured or un-matured, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by the Defendants or any of them or the successors and assigns of any of them against Plaintiff or any of the 2008 Transaction Subclass Members or their attorneys, which (even in part) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to any count of the Complaint and which (even in part) arise out of 2008 Transaction Subclass Members' status as stockholders, buyers, or sellers of Landry's common stock at any point between September 17, 2008 and January 11, 2009, or which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

(ee) "Settlement" means the settlement contemplated by this Stipulation.

(ff) "Settlement Amount" means the sum of \$14,500,000 in cash.

(gg) "Settlement Fund" means the Settlement Amount and any and all interest earned thereon.

(hh) "Settlement Hearing" means the hearing set by the Court to consider approval of the Settlement.

(ii) "Summary Notice" means the Summary Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Awards of Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit D.

(jj) "Taxes" means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Plaintiff's Counsel in connection with determining the amount of, and paying, any taxes owed by

the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

(kk) “Unknown Claims” means any Settled Claims that Plaintiff or any of the other 2008 Transaction Subclass Member does not know or suspect exists in his, her or its favor at the time of the release of the Settled Claims as against the Released Parties, and any Settled Defendants’ Claims that any Defendant does not know or suspect to exist in his, her or its favor at the time of the release of the Settled Defendants’ Claims as against Plaintiff, the other 2008 Transaction Subclass Members and their counsel, including without limitation those claims which, if known, might have affected the decision to enter into, or not object to, this Settlement. With respect to the Settled Claims and the Settled Defendants’ Claims, the Parties stipulate and agree that Plaintiff and Defendants shall expressly waive, and each of the other 2008 Transaction Subclass Members shall be deemed to have waived and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

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.

Plaintiff and Defendants acknowledge, and the other 2008 Transaction Subclass Members by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Settled Claims and Settled Defendants’ Claims was separately bargained for and was a key element of the Settlement.

## SETTLEMENT CONSIDERATION

2. In consideration of the Settlement of the Settled Claims against Defendants and the other Released Parties, Defendants or their successor(s)-in-interest shall pay or caused to be paid the Settlement Amount into the Escrow Account for the benefit of the 2008 Transaction Subclass as follows: (i) Defendants or their successor(s)-in-interest shall pay or cause to be paid \$5,000,000 of the Settlement Amount into the Escrow Account no later than five (5) business days after the Court of Chancery enters the Scheduling Order preliminarily approving the Settlement; and (ii) Defendants or their successor(s)-in-interest shall pay or caused to be paid the remaining \$9,500,000 of the Settlement Amount into the Escrow Account no later than thirty (30) calendar days after the Court enters the Order and Final Judgment or similar order finally approving the Settlement.

3. Defendants shall have the right to review and approve an Escrow Agent and an Escrow Agreement, with such approval not to be unreasonably withheld, and may choose to appoint one of its own counsel to serve as co-signor for expenditures made from the Escrow Account until such time as the Effective Date shall occur.

4. No consideration shall be paid unless and until the putative actions consolidated under the style *Goldfein v. Landry's Restaurants, Inc.*, Cause No. 2009-71883, in the District Court of Harris County, 164th Judicial District (the "Texas Action"), have been dismissed or otherwise disposed of with finality. This condition shall be satisfied by the execution and transmittal of a letter substantially in the form attached hereto as Exhibit F from the interim counsel designated by the District Court of Harris County, 164th Judicial District, to act on behalf of the putative class in the Texas Action.

### **USE OF SETTLEMENT FUND**

5. The Settlement Fund shall be used to pay (a) any Taxes; (b) any Plaintiff Notice and Administration Costs; and (c) any attorneys' fees and/or expenses awarded by the Court. The balance remaining in the Settlement Fund shall be distributed to Authorized Claimants as provided below.

6. The Net Settlement Fund shall be distributed to Authorized Claimants as provided herein. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances of less than \$100,000 may be invested in money market mutual funds comprised exclusively of investments secured by the full faith and credit of the United States.

7. The parties hereto agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Plaintiff's Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided by paragraph

8 below. Plaintiff's Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Defendants or their successor(s)-in-interest will provide promptly to Plaintiff's Counsel the statement described in Treasury Regulation § 1.468B-3(e). Plaintiff's Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

8. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

9. This is not a claims-made settlement. Upon the occurrence of the Effective Date, neither Defendants nor any person or entity who or which paid any portion of the Settlement Amount on their behalf shall have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

10. The Claims Administrator shall discharge its duties under Plaintiff's Counsel's supervision and subject to the jurisdiction of the Court. Except as otherwise provided herein, the Released Parties shall have no responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any person, including, but not limited to, the 2008 Transaction Subclass Members, in connection with any such administration.

### **RELEASE OF CLAIMS**

11. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the remaining claims asserted or that could have been asserted in the Complaint that were not settled and released pursuant to the Stipulation of Partial Settlement, and shall fully and finally release any and all Settled Claims as against all Released Parties, and shall also fully and finally release Plaintiff, the 2008 Transaction Subclass Members and their counsel from any and all Settled Defendants' Claims.

12. Pursuant to the Judgment, upon the Effective Date, Plaintiff and the other 2008 Transaction Subclass Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall release, waive, discharge and dismiss any and all Settled Claims, and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Claims, against all Released Parties.

13. Pursuant to the Judgment, upon the Effective Date, Defendants on behalf of themselves and the other Released Parties, shall release, waive, discharge and dismiss any and all Settled Defendants' Claims, and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Defendants' Claims, against Plaintiff, the other 2008 Transaction Subclass Members and their counsel.

### **CLASS CERTIFICATION**

14. The Parties agree to seek certification, for Settlement purposes only, pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1), and 23(b)(2), of a non-opt out settlement subclass defined as: all persons and entities who held shares of Landry's common stock at any point between September 17, 2008 and January 11, 2009, inclusive, excluding Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry's and the Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party. The Parties also agree to seek for Settlement purposes only appointment of LMPERS as Class Representative and appointment of Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A. as Class Counsel.

### **PROCEDURE FOR APPROVAL**

15. Promptly after execution of this Stipulation, the Parties shall submit this Stipulation, together with all Exhibits hereto, to the Court and shall apply for entry of a Scheduling Order with Respect to the Remaining Claims Settlement and Amendment to Scheduling Order Dated June 28, 2010, substantially in the form attached hereto as Exhibit A, approving the method and form of providing notice of the Settlement to the 2008 Transaction Subclass Members, preliminarily approving the Settlement, and scheduling a Settlement Hearing for consideration of the proposed Settlement. The Parties shall propose to the Court that (a) within ten (10) business days after entry of the Scheduling Order, Landry's or its successor(s)-in-interest shall publish Summary Notice, once in the *Investor's Business Daily* and over the PR Newswire, and (b) Landry's or its successor(s)-in-interest shall mail the Notice and the Claim

Form to current Landry's stockholders ("Current Stockholders"). Landry's or its successor(s)-in-interest may mail the Notice and the Claim Form to Current Stockholders along with its proxy statement in connection with the sale/merger of the Company to Fertitta and/or a third party, but in no event shall such mailing take place less than sixty (60) calendar days before the Settlement Hearing. No less than sixty (60) calendar days prior to the Settlement Hearing, Plaintiff shall cause the Notice and the Claim Form to be sent to the remaining members of the 2008 Transaction Subclass (the "Non-Current Stockholders") that can reasonably be identified. To assist in identifying and providing notice to the Non-Current Stockholders, Landry's has provided to Plaintiff's Counsel, at no charge to the Settlement Fund, Plaintiff, Plaintiff's Counsel or the Claims Administrator, the Company's securities holder lists (consisting of securities holder names and addresses) that were provided to the Company by its transfer agent, American Stock Transfer, and has no further obligation in this regard.

16. All Defendant Notice Costs shall be paid by Landry's or its successor(s)-in-interest and in no event shall the Settlement Fund, Plaintiff, Plaintiff's Counsel, or the Claims Administrator be responsible for any such fees, costs or expenses.

17. All Plaintiff Notice and Administration Costs shall be paid from the Settlement Fund. Plaintiff's Counsel may pay from the Settlement Fund all such Plaintiff Notice and Administration Costs actually incurred without further order of the Court. Such costs shall include, without limitation, the actual costs of printing and mailing the Notice to Non-Current Stockholders, reimbursements to nominee owners for forwarding the Notice to their beneficial owners who are Non-Current Stockholders, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing such Notice and processing the submitted claims, the fees and expenses of any further notice that the Court might require to

occur following approval of the Settlement or the distribution of the Net Settlement Fund to 2008 Transaction Subclass Members, and the fees and costs, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Plaintiff Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to Defendants or their successor(s)-in-interest or to any other person or entity who or which paid any portion of the Settlement Amount on their behalf.

18. If the Settlement contemplated by this Stipulation is approved by the Court, Plaintiff and Defendants shall jointly request that the Court enter an Order and Final Judgment substantially in the form attached hereto as Exhibit E.

#### **ATTORNEYS' FEES AND LITIGATION EXPENSES**

19. Concurrent with seeking final approval of the Settlement, Plaintiff's Counsel will apply to the Court for an award of attorneys' fees in connection with this Settlement which shall be a customary percentage of the Settlement Fund not to exceed 25%. Plaintiff's Counsel will also apply to the Court for reimbursement of litigation expenses not to exceed \$750,000. No Defendant, nor any other Released Party or their successor(s)-in-interest, shall take any position with respect to Plaintiff's Counsel's application for or award of attorneys' fees and litigation expenses.

20. Subject to the approval of the Court, such amounts as are awarded by the Court as attorneys' fees and/or litigation expenses shall be paid to Plaintiff's Counsel from the Settlement Fund within five (5) business days after entry by the Court of the award notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiff's Counsel's obligations to: (1) provide a letter of indemnification or other means to guarantee, in a form reasonably satisfactory

to Defendants, the refund or repayment of such award pending resolution of such objections, appeal, or collateral attack on the Settlement or any part thereof, and (2) make appropriate refunds or repayments if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or cost award is reduced or reversed. Plaintiff's Counsel shall make the appropriate repayments to the Settlement Fund within ten (10) business days after receipt by Plaintiff's Counsel of written notice informing Plaintiff's Counsel of any reversal or modification to the award of attorneys' fees and expenses. Further, if, for any reason, the Settlement is terminated by Plaintiff or Defendants pursuant to the terms of this Stipulation, Plaintiff's Counsel shall repay to the persons who paid the Settlement Amount or any successor(s)-in-interest the attorneys' fees and expenses paid to Plaintiff's Counsel. Any order or proceeding relating to the application for or disbursement of attorneys' fees and expenses, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or delay the finality of the Order and Final Judgment approving the Settlement and this Stipulation.

#### **CLAIMS ADMINISTRATOR**

21. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying claims under Plaintiff's Counsel's supervision and subject to the jurisdiction of the Court. Other than Landry's obligation to provide its shareholder records pursuant to paragraph 15 above, as provided herein, none of the Defendants shall have any responsibility whatsoever for the administration of the Settlement or the claims process and shall have no liability whatsoever to any person, including, but not limited to, Plaintiff, other 2008 Transaction Class Members or Plaintiff's Counsel in connection with such administration.

Defendants and Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

22. The Claims Administrator shall receive claims and determine first, whether the claim is a valid claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Loss Amount compared to the total Loss Amounts of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit B, or in such other plan of allocation as the Court approves).

23. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiff and Plaintiff's Counsel may not cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Action. No Defendant, nor any other Released Party or their successor(s)-in-interest, shall have any involvement in or responsibility or liability whatsoever for the plan of allocation or the allocation of the Net Settlement Fund.

24. Any 2008 Transaction Subclass Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Judgment to be entered in the Action and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Party concerning any Settled Claim.

25. Plaintiff's Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. No Defendant, nor any other Released

Party or their successor(s)-in-interest, shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. No Defendant, nor any other Released Party or their successor(s)-in-interest, shall be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Plaintiff's Counsel with respect to accepting or rejecting any Claim Form or claim for payment by a 2008 Transaction Subclass Member. Plaintiff's Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

26. For purposes of determining the extent, if any, to which a 2008 Transaction Subclass Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

a. Each 2008 Transaction Subclass Member shall be required to submit a Claim Form, substantially in the form attached hereto as Exhibit C, supported by such documents as are designated therein, including proof of the Claimant's transactions in Landry's common stock, or such other documents or proof as the Claims Administrator or Plaintiff's Counsel, in their discretion, may deem acceptable;

b. All Claim Forms must be submitted by the date set by the Court in the Scheduling Order and specified in the Notice, unless such deadline is extended by Order of the Court. Any 2008 Transaction Subclass Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and the releases provided for herein, and will be

permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party concerning any Settled Claim. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when mailed, if received with a postmark indicated on the envelope and if mailed by first-class or overnight U.S. Mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

c. Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Plaintiff's Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

d. Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator, under supervision of Plaintiff's Counsel, shall notify, in a timely fashion and in writing, all Claimants whose claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

e. If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and

statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Plaintiff's Counsel shall thereafter present the request for review to the Court; and

f. The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

27. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Rules of the Court of Chancery, provided that such investigation and discovery shall be limited to that Claimant's status as a 2008 Transaction Subclass Member and the validity and amount of the Claimant's claim. No discovery shall be allowed on the merits of this Action or this Settlement in connection with the processing of Claim Forms.

28. Plaintiff's Counsel will apply to the Court, on notice to all Defendants, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the claims submitted; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account, and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

29. Payment pursuant to the Class Distribution Order shall be final and conclusive against all 2008 Transaction Subclass Members. All 2008 Transaction Subclass Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the

Settlement, including the terms of the Judgment to be entered in this Action and the releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Released Parties concerning any and all of the Settled Claims.

30. All proceedings with respect to the administration, processing and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

#### **EFFECTIVE DATE**

31. The “Effective Date” of this Settlement shall be the first date when all of the following shall have occurred:

- (a) the Court has entered the Scheduling Order;
- (b) Defendants or their successor(s)-in-interest have paid or caused to be paid the Settlement Amount in full as required by paragraph 2 hereof;
- (c) the Court has finally approved the Settlement, following notice to the 2008 Transaction Subclass and a hearing; and
- (d) the Court has entered the Order and Final Judgment substantially in the form attached hereto as Exhibit E, which has become Final, or, in the event that the Court enters an Alternative Judgment (as defined in paragraph 1(r) above) and none of the Parties hereto elect to terminate this Settlement, the date that such Alternative Judgment becomes Final.

#### **TERMINATION RIGHTS; EFFECT OF TERMINATION**

32. Defendants and Plaintiff shall have the right to terminate this Settlement and this Stipulation by providing written notice to the other, but only in the event that: (a) the Court declines to enter the Scheduling Order in any material respect; (b) the Court declines to enter the

Order and Final Judgment in any material respect; (c) the Order and Final Judgment is modified or reversed in any material respect; or (d) an Alternative Judgment is modified or reversed in any material respect. Any decision with respect to an application for attorneys' fees and expenses and Court approval of the Plan of Allocation shall not be considered material to this Settlement and shall not be grounds for termination.

33. Except as otherwise provided herein, in the event this Settlement is terminated, the Settlement shall be without prejudice, and none of its terms shall be effective or enforceable and the fact of this Settlement shall not be admissible in any trial of this Action, and the Parties shall be deemed to have reverted to their respective status in this Action immediately prior to July 7, 2010 and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any portion of the Settlement Amount previously paid by or on behalf of the Defendants or their successor(s)-in-interest, together with any interest earned thereon, less any Taxes due with respect to such income, and less all Plaintiff Notice Costs and Administration Costs actually incurred and paid or payable from the Settlement Fund, shall be returned to the persons who paid the Settlement Amount within ten (10) business days after written notification of such event.

#### **MISCELLANEOUS PROVISIONS**

34. This Stipulation and all negotiations, discussions and proceedings in connection herewith shall not be deemed or constitute a presumption, concession or an admission by any Party of any fault, liability or wrongdoing by any of them, and shall not be interpreted, construed, deemed, involved, offered or received in evidence or otherwise used by any person in the Action or in any other action or proceeding, whether civil, criminal or administrative, except in connection with any proceeding to enforce the terms of this Stipulation.

35. All of the Exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

36. Each Defendant contributing to the Settlement Amount warrants as to himself, herself or itself that, as to the payments made by or on behalf of him, her or it, at the time of such payment that the Defendant made or caused to be made pursuant to paragraph 2 above, he, she or it was not insolvent, nor did nor will the payment required to be made by or on behalf of him, her or it render such Defendant insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This warranty is made by each such Defendant and not by such Defendant's Counsel.

37. If a case is commenced in respect of any Defendant or their successor(s)-in-interest contributing to the Settlement Amount (or any insurer contributing funds to the Settlement Amount on behalf of any Defendant) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Plaintiff's Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and Judgment entered in favor of the Defendants and the other Released Parties pursuant to this Stipulation, which releases and Judgment shall be null and void, and the Parties shall be restored to their respective positions in the litigation as of July 7, 2010 and any cash amounts in the Settlement Fund shall be returned as provided in paragraph 33 above.

38. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiff and the 2008 Transaction Subclass Members against the Released Parties, their counsel and insurers with respect to the Settled Claims. Subject to the approval of the Court and the terms hereof, this Stipulation is intended to settle and release all remaining claims asserted against Defendants in the Complaint that were not settled and released pursuant to the Stipulation and Partial Settlement, as well as claims that could have been asserted in any forum by Plaintiff (on behalf of itself and/or Landry's) or any 2008 Transaction Subclass Member which (even in part) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to any count of the Complaint and which (even in part) arise out of Plaintiff's or the 2008 Transaction Subclass Members' status as stockholders, buyers, or sellers of Landry's common stock at any point between September 17, 2008 and January 11, 2009, inclusive. The Parties agree that the terms of the Settlement were negotiated at arm's-length and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

39. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all signatories hereto or their successor(s)-in-interest.

40. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

41. The consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for an award of attorneys' fees and expenses to Plaintiff's Counsel and enforcing the terms of this Stipulation.

42. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

43. This Stipulation and its Exhibits constitute the entire agreement among the Parties concerning this Settlement, and no representations, warranties, or inducements have been made by any Party concerning this Stipulation and the Exhibits hereto other than those contained and memorialized in such documents.

44. This Stipulation may be executed in one or more original and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the signatories of this Stipulation shall exchange among themselves original signed counterparts.

45. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

46. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of Delaware without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

47. This Stipulation shall not be construed more strictly against one Party than another, it being recognized that it is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Stipulation.

48. All counsel and any other person executing this Stipulation and any of the Exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

49. Plaintiff's Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court entry of the Scheduling Order, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

Dated: July 23, 2010

OF COUNSEL:  
Mark Lebovitch  
Amy Miller  
Jeroen van Kwawegen  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(212) 554-1400  
(212) 554-1444 (facsimile)

*Counsel for Plaintiff*

/s/ Stuart M. Grant

Stuart M. Grant (Del. Bar ID No. 2526)  
John C. Kairis (Del. Bar ID No. 2752)  
Mary S. Thomas (Del. Bar ID No. 5072)  
Christian Keeney (Del. Bar ID No. 5197)  
GRANT & EISENHOFER P.A.  
1201 N. Market St.  
Wilmington, DE 19801  
(302) 622-7000  
(302) 622-7100 (facsimile)

*Counsel for Plaintiff*

OF COUNSEL:  
Gerard G. Pecht  
Peter Stokes  
Dan Pirolo  
Mark Oakes  
FULBRIGHT & JAWORSKI L.L.P.  
1301 McKinney, Suite 5100  
Houston, TX 77010-3095  
(713) 651-5151  
(713) 651-5246 (facsimile)

/s/ David J. Teklits

David J. Teklits (Del. Bar ID No. 3221)  
Kevin M. Coen (Del. Bar ID No. 4775)  
MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP  
1201 North Market Street, 18th Floor  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 351-9292  
(302) 498-6212 (facsimile)

*Counsel for Defendants Kenneth Brimmer,  
Michael S. Chadwick, Michael Richmond and  
Joe Max Taylor*

OF COUNSEL:  
David D. Sterling  
Danny David  
BAKER BOTTS L.L.P.  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002-4995  
(713) 229-1946  
(713) 229-7946 (facsimile)

/s/ Daniel A. Dreisbach  
Thomas A. Beck (Del. Bar ID No. 2086)  
Daniel A. Dreisbach (Del. Bar ID No. 2583)  
Meredith M. Stewart (Del. Bar ID No. 4960)  
Scott W. Perkins (Del. Bar ID No. 5049)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 N. Market Street  
Wilmington, DE 19801  
(302) 651-7700  
(302) 651-7701 (facsimile)

*Counsel for Defendants Tilman J. Fertitta,  
Steven L. Scheinthal, Fertitta Holdings, Inc.,  
Fertitta Acquisition Co., Richard Liem, Fertitta  
Group, Inc. and Fertitta Merger Co.*

OF COUNSEL:  
Odean L. Volker  
HAYNES AND BOONE, LLP  
1 Houston Center  
1221 McKinney, Suite 2100  
Houston, TX 77010  
(713) 547-2036  
(713) 236-5581 (facsimile)

/s/ Bruce L. Silverstein  
Bruce L. Silverstein (Del. Bar ID No. 2495)  
Elena C. Norman (Del. Bar ID No. 4780)  
Tammy L. Mercer (Del. Bar ID No. 4957)  
YOUNG CONAWAY STARGATT &  
TAYLOR LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801  
(302) 571-6600  
(302) 576-3335 (facsimile)

*Counsel for Nominal Defendant Landry's  
Restaurants Inc.*

#464605.8

IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE  
EMPLOYEES' RETIREMENT SYSTEM, on  
behalf of itself and all other similarly situated  
shareholders of Landry's Restaurants, Inc., and  
derivatively on behalf of nominal defendant  
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.  
SCHEINTHAL, KENNETH BRIMMER,  
MICHAEL S. CHADWICK, MICHAEL  
RICHMOND, JOE MAX TAYLOR, FERTITTA  
HOLDINGS, INC., FERTITTA ACQUISITION  
CO., RICHARD LIEM, FERTITTA GROUP,  
INC. and FERTITTA MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**SCHEDULING ORDER WITH RESPECT TO THE REMAINING CLAIMS  
SETTLEMENT AND AMENDMENT TO  
SCHEDULING ORDER DATED JUNE 28, 2010**

The Parties have previously made application, pursuant to Delaware Court of Chancery Rules 23 and 23.1, for an Order approving the proposed partial settlement (the "Partial Settlement") of the above-captioned action (the "Action") in accordance with a Stipulation of Partial Settlement dated June 22, 2010 (the "Partial Settlement Stipulation"). On June 28, 2010, this Court entered a Scheduling Order (the "Partial Settlement Scheduling Order") in connection with the Partial Settlement. The Partial Settlement Scheduling Order is amended as set forth in paragraph 8 hereof.

Now the Parties seek an Order approving the proposed settlement of the remaining claims in the Action (the “Remaining Claims Settlement”) in accordance with a Stipulation of Settlement of Remaining Claims (the “Remaining Claims Stipulation”), which (along with the defined terms therein) is incorporated herein by reference and which, together with the Exhibits thereto, sets forth the terms and conditions for the proposed settlement of the Action and for an Order and Final Judgment to fully and finally compromise, resolve, discharge, settle, and dismiss with prejudice all remaining claims asserted or that could have been asserted against Defendants in the Second Amended Verified Class Action and Derivative Complaint filed in the Action on May 21, 2010, and every prior version of the Complaint (collectively, the “Complaint”) that were not settled and released pursuant to the Partial Settlement; and the Court having read and considered the Remaining Claims Stipulation and the Exhibits thereto; all Parties having consented to the entry of this Order; and incorporating the Partial Settlement Scheduling Order entered by this Court on June 28, 2010;

**IT IS HEREBY ORDERED** this day of \_\_\_\_\_, 2010, that:

1. The Court preliminarily approves the Remaining Claims Settlement on the terms set forth in the Remaining Claims Stipulation, subject to further consideration at the Settlement Hearing referred to in paragraph 4 below.

2. For purposes of the Remaining Claims Settlement only, and preliminarily for purposes of this Order, the Action shall be maintained and proceed as a class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf of the following settlement subclass (the “2008 Transaction Subclass”):

All persons and entities who held shares of Landry’s Restaurants, Inc.’s (“Landry’s”) common stock at any point between September 17, 2008 and January 11, 2009, inclusive, excluding Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry’s and the

Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

3. For purposes of the Remaining Claims Settlement only, Plaintiff Louisiana Municipal Police Employees' Retirement System is preliminarily appointed as Class Representative, and Plaintiff's Counsel, Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A., are preliminarily appointed as Class Counsel pursuant to Delaware Court of Chancery Rule 23.

4. A hearing (the "Settlement Hearing") shall be held on \_\_\_\_\_, 2010, at \_\_\_\_\_.m. in the Court of Chancery in the New Castle Courthouse, 500 North King Street, Wilmington, Delaware, 19801, to: (a) determine whether the proposed Remaining Claims Settlement, on the terms and conditions provided for in the Remaining Claims Stipulation, is fair, reasonable and adequate and in the best interests of Plaintiff and the 2008 Transaction Subclass and should be approved by the Court; (b) determine whether the preliminary class certification described in this Order shall be made final; (c) determine whether Plaintiff and Plaintiff's Counsel have adequately represented the 2008 Transaction Subclass; (d) determine whether the Court should enter an Order and Final Judgment as provided in the Remaining Claims Stipulation dismissing with prejudice the claims asserted or that could have been asserted against Defendants in the Complaint that were not settled and released pursuant to the Partial Settlement and releasing the Settled Claims and Settled Defendants' Claims; (e) determine whether the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; (f) hear the application by Plaintiff's Counsel for an award of attorneys' fees and reimbursement of litigation expenses in connection with the Remaining Claims Settlement; and (g) rule on such other matters as the Court may deem appropriate.

5. The Court reserves the right to adjourn the Settlement Hearing or any adjournment thereof, including the hearing on Plaintiff's Counsel's application for an award of attorneys' fees and expenses, without further notice of any kind to the 2008 Transaction Subclass other than by oral announcement at the Settlement Hearing or any adjournment thereof.

6. The Court reserves the right to approve the Remaining Claims Settlement and/or the Plan of Allocation at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties to the Remaining Claims Stipulation and without further notice to the 2008 Transaction Subclass. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Settled Claims against the Released Parties and the Settled Defendants' Claims against Plaintiff, the 2008 Transaction Subclass Members and their counsel with prejudice regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

7. The Court approves, in form and content, the Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), the Proof of Claim form (the "Claim Form"), and the Summary Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice"), substantially in the forms attached as Exhibits B, C and D to the Remaining Claims Stipulation, respectively. With respect to the Remaining Claims Settlement, (a) within ten (10) business days after entry of the Scheduling Order, Landry's or its successor(s)-in-interest shall publish Summary Notice, once in the *Investor's Business Daily* and over the PR Newswire, and (b) Landry's or its successor(s)-in-interest shall mail the Notice and the Claim Form to current Landry's stockholders ("Current Stockholders"). Landry's or its

successor(s)-in-interest may mail the Notice and Claim Form to Current Stockholders along with its proxy statement in connection with the sale/merger of the Company to Fertitta and/or a third party, but in no event shall such mailing take place less than sixty (60) calendar days before the Settlement Hearing. No less than sixty (60) calendar days prior to the Settlement Hearing, Plaintiff shall cause the Notice and the Claim Form to be sent to the remaining members of the 2008 Transaction Subclass (the “Non-Current Stockholders”) that can reasonably be identified. All costs of notice and administration of the Remaining Claims Settlement shall be paid in accordance with paragraphs 16 and 17 of the Remaining Claims Stipulation.

8. By the terms of the Partial Settlement Scheduling Order, Landry’s or its successor(s)-in-interest was ordered to (a) publish a summary notice once in the *Investor’s Business Daily* and over the PR Newswire, and (b) mail a notice to all Current Stockholders, which mailing may take place by proxy statement, provided that such mailing take place less than sixty (60) calendar days before the Settlement Hearing. The Partial Settlement Scheduling Order is hereby amended to permit Landry’s or its successor(s)-in-interest to provide notice with respect to the Partial Settlement pursuant to the Notice and Summary Notice attached as Exhibits B and D to the Remaining Claims Stipulation, provided that Landry’s or its successor(s)-in-interest publishes the Summary Notice within ten (10) business days after entry of this Scheduling Order and mails the Notice to all Current Stockholders no less than sixty (60) calendar days before the Settlement Hearing. All costs of notice of the Partial Settlement shall be paid in accordance with paragraph 8 of the Partial Settlement Stipulation and paragraph 6 of the Partial Settlement Scheduling Order.

9. The form and method of notice specified in this Order is the best notice practicable under the circumstances and shall constitute due and sufficient notice of the

Settlement Hearing to all persons entitled to receive such notice, and fully satisfies the requirement of due process, Delaware Court of Chancery Rule 23 and applicable law. Prior to the date of the Settlement Hearing directed herein, the parties shall file with the Court proof, by affidavit or declaration, of the publication and mailing of notice as directed herein.

10. The Court approves the appointment of The Garden City Group, Inc. as the Claims Administrator. The Claims Administrator shall use reasonable efforts to give notice to nominee purchasers such as brokerage firms and other persons or entities who purchased Landry's common stock during the 2008 Transaction Subclass Period as record owners but not as beneficial owners. As set forth in the Notice, such nominees who hold or held Landry's common stock for beneficial owners who are 2008 Transaction Subclass Members are directed to send a copy of the Notice and the Claim Form to the beneficial owner of the shares postmarked no more than five (5) business days from the date of receipt of the Notice, or to provide the names and addresses of such persons no later than five (5) business days from the date of receipt of the Notice to the Claims Administrator at the address specified in the Notice, who shall promptly send a copy of the Notice and Claim Form to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund. Landry's or its successor(s)-in-interest are responsible for providing, and paying for the costs of providing, notice to nominee owners who hold or held Landry's common stock of the benefit of current Landry's shareholders and 2009 Transaction Subclass Members (as defined in the Partial Settlement Stipulation and Partial Settlement

Scheduling Order) in accordance with paragraph 8 of the Partial Settlement Stipulation and paragraph 6 of the Partial Settlement Scheduling Order.

11. Any member of the 2008 Transaction Subclass who objects to the Remaining Claims Settlement and/or the Order and Final Judgment to be entered by the Court, the Plan of Allocation and/or Plaintiff's Counsel's fee and expense application with respect to the Remaining Claims Settlement, or otherwise wishes to be heard, may appear personally or by counsel at the Settlement Hearing and present evidence or argument that may be proper and relevant; *provided, however*, that no member of the 2008 Transaction Subclass may be heard and no papers or briefs submitted by or on behalf of any member of the 2008 Transaction Subclass be received and considered, except by Order of the Court for good cause shown, unless, no later than ten (10) business days prior to the Settlement Hearing, copies of: (a) a written notice of intention to appear, identifying the name, address, and telephone number of the objector and, if represented, their counsel; (b) a written detailed statement of such person's specific objections to any matter before the Court; (c) proof of membership in the 2008 Transaction Subclass, including a listing of all transactions in Landry's common stock during the 2008 Transaction Subclass; (d) the grounds for such objections and any reasons for such person's desiring to appear and be heard; and (e) all documents and writings such person desires the Court to consider, shall be served by hand or overnight mail upon each of the following counsel:

Mark Lebovitch  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019

Mary S. Thomas  
GRANT & EISENHOFER P.A.  
1201 N. Market St.  
Wilmington, DE 19801

*Plaintiff's Counsel*

David J. Teklits  
MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP  
1201 North Market Street, 18th Floor  
P.O. Box 1347  
Wilmington, DE 19899

Gerard G. Pecht  
FULBRIGHT & JAWORSKI L.L.P.  
1301 McKinney, Suite 5100  
Houston, TX 77010

*Counsel for Defendants Kenneth Brimmer, Michael S.  
Chadwick, Michael Richmond and Joe Max Taylor*

Thomas A. Beck  
Daniel A. Dreisbach  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 N. Market Street  
Wilmington, DE 19801

David D. Sterling  
Danny David  
BAKER BOTTS L.L.P.  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002

*Counsel for Defendants Tilman J. Fertitta, Steven L.  
Scheinthal, Fertitta Holdings, Inc., Fertitta Acquisition  
Co., Richard Liem, Fertitta Group, Inc. and Fertitta  
Merger Co.*

Bruce L. Silverstein  
Elena C. Norman  
YOUNG CONAWAY STARGATT & TAYLOR LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801

Odean L. Volker  
HAYNES AND BOONE, LLP  
One Houston Center  
1221 McKinney, Suite 2100  
Houston, TX 77010

*Counsel for Nominal Defendant Landry's  
Restaurants Inc.*

at the same time these papers must be filed with the Register in Chancery, Court of Chancery, 500 North King Street, Wilmington, DE 19801. Unless the Court otherwise directs, no member of the 2008 Transaction Subclass shall be entitled to object to the Settlement, or to the Order and Final Judgment to be entered herein, or to the Plan of Allocation or award of attorneys' fees and expenses to Plaintiff's Counsel, or otherwise to be heard, except by serving and filing written objections as described above. Any person who fails to object in the manner provided above shall be deemed to have waived such objection and shall forever be barred from making any such objection in this Action or in any other action or proceeding.

12. In order to be entitled to participate in the Remaining Claims Settlement, in the event the Remaining Claims Settlement is effected in accordance with all of the terms and conditions set forth in the Remaining Claims Stipulation, each 2008 Transaction Subclass Member shall take the following actions and be subject to the following conditions:

(a) A properly executed Claim Form, substantially in the form attached as Exhibit C to the Remaining Claims Stipulation, must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than 120 calendar days from

the date set for the mailing of Notice. Such deadline may be further extended by Court Order. Each Claim Form shall be deemed to have been submitted when mailed (if properly addressed and mailed by first-class or overnight U.S. Mail, postage prepaid) provided such Claim Form is actually received prior to the motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Claim Form submitted in any other manner shall be deemed to have been submitted when it was actually received at the address designated in the Notice.

(b) The Claim Form submitted by each 2008 Transaction Subclass Member Class Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Plaintiff's Counsel or the Claims Administrator; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his or her current authority to act on behalf of the 2008 Transaction Subclass Member must be included with the Claim Form; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein, and must be signed under penalty of perjury.

(c) As part of the Claim Form, each 2008 Transaction Subclass Member shall submit to the jurisdiction of the Court with respect to the Claim Form submitted

13. All funds held in the Escrow Account shall be deemed and considered to be *in custodia legis* and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the Stipulation and/or further order of the Court.

14. If the Court approves the Remaining Claims Settlement provided for in the Remaining Claims Stipulation following the Settlement Hearing, an Order and Final Judgment shall be entered substantially in the form attached as Exhibit E to the Remaining Claims Stipulation.

15. In the event this Remaining Claims Settlement is terminated, the Remaining Claims Settlement shall be without prejudice, and none of its terms shall be effective or enforceable and the fact of the Remaining Claims Settlement shall not be admissible in any trial of this Action, and the Parties shall be deemed to have reverted to their respective status in this Action immediately prior to July 7, 2010 and, except as otherwise expressly provided, the Parties shall proceed in all respects as if the Remaining Claims Stipulation and any related orders had not been entered.

16. The administration of the proposed Settlement and the determination of all disputed questions of law and fact with respect to the validity of any Proof of Claim or right of any person or entity to participate in the distribution of the Net Settlement Fund shall be under the authority of this Court.

17. Pending final determination by the Court of whether the Remaining Claims Settlement should be approved, Plaintiff and the 2008 Transaction Subclass are barred and enjoined from instituting, commencing or prosecuting any Settled Claims as against the Released Parties.

18. The Court retains jurisdiction over the Action to consider all further applications arising out of or connected with the Remaining Claims Settlement.

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Vice Chancellor

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

LOUISIANA MUNICIPAL POLICE  
EMPLOYEES' RETIREMENT SYSTEM, on  
behalf of itself and all other similarly situated  
shareholders of Landry's Restaurants, Inc., and  
derivatively on behalf of nominal defendant  
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.  
SCHEINTHAL, KENNETH BRIMMER,  
MICHAEL S. CHADWICK, MICHAEL  
RICHMOND, JOE MAX TAYLOR, FERTITTA  
HOLDINGS, INC., FERTITTA ACQUISITION  
CO., RICHARD LIEM, FERTITTA GROUP,  
INC. and FERTITTA MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**NOTICE OF PROPOSED SETTLEMENTS OF SHAREHOLDER LITIGATION,  
SETTLEMENT FAIRNESS HEARING, AND APPLICATIONS FOR ATTORNEYS'  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

TO: ALL PERSONS AND ENTITIES WHO HELD SHARES OF LANDRY'S RESTAURANTS, INC. ("LANDRY'S" OR THE "COMPANY") COMMON STOCK AT ANY POINT BETWEEN SEPTEMBER 17, 2008 AND JANUARY 11, 2009, INCLUSIVE, EXCLUDING CERTAIN PERSONS AND ENTITIES AS SET FORTH IN PARAGRAPH 8 BELOW (THE "2008 TRANSACTION SUBCLASS"); AND

ALL PERSONS AND ENTITIES WHO HELD SHARES OF LANDRY'S COMMON STOCK AT ANY POINT BETWEEN NOVEMBER 3, 2009 AND THE CLOSING OF A SALE/MERGER TRANSACTION OF LANDRY'S, EXCLUDING CERTAIN PERSONS AND ENTITIES AS SET FORTH IN PARAGRAPH 9 BELOW (THE "2009 TRANSACTION SUBCLASS", TOGETHER WITH 2008 TRANSACTION SUBCLASS, THE "SETTLEMENT SUBCLASSES" OR "CLASS")

THIS NOTICE EXPLAINS IMPORTANT RIGHTS YOU MAY HAVE AS A CLASS MEMBER WITH RESPECT TO THE ABOVE-CAPTIONED CONSOLIDATED SHAREHOLDER CLASS ACTION AND DERIVATIVE LAWSUIT (THE "ACTION" OR "LITIGATION"), INCLUDING YOUR POSSIBLE RIGHT TO RECEIVE CASH FROM THE

SETTLEMENT FUND CREATED FOR THE BENEFIT OF THE 2008 TRANSACTION SUBCLASS. YOUR LEGAL RIGHTS WILL BE AFFECTED WHETHER OR NOT YOU ACT. PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY!

Plaintiff Louisiana Municipal Police Employees' Retirement System ("LMPERS" or "Plaintiff"), on behalf of itself and the 2008 Transaction Subclass, has reached a proposed settlement of Counts I, II, III and IX of the Complaint in this Action, pursuant to which the Defendants have agreed to pay a total of \$14,500,000 in cash ("2008 Class Settlement"). A copy of the Complaint can be found at the settlement website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

Plaintiff, on behalf of itself and the 2009 Transaction Subclass, has reached a proposed settlement of Counts IV through VIII of the Complaint pursuant to which the Defendants and the Special Committee of the Company's Board of Directors have agreed to implement certain deal terms that amend and supercede the terms of the 2009 Agreement of Tilman J. Fertitta ("Fertitta") and certain of the Fertitta Entities (as defined below) to acquire Landry's for \$14.75 per share (the "2009 Transaction") ("2009 Deal Settlement").

If approved by the Court of Chancery of the State of Delaware (the "Court"), these two proposed settlements (collectively, the "Settlements") will resolve all claims asserted or that could have been asserted against Defendants in the Action.

IF YOU ARE A NOMINEE WHO HELD LANDRY'S COMMON STOCK FOR THE BENEFIT OF ANOTHER, PLEASE READ THE SECTION BELOW ENTITLED "NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS."

MEMBERS OF THE SETTLEMENT SUBCLASSES ARE REFERRED TO IN THIS NOTICE AS "CLASS MEMBERS". THE FOLLOWING CHART OUTLINES CERTAIN LEGAL RIGHTS AND OPTIONS FOR CLASS MEMBERS. AS NOTED BELOW, ONLY MEMBERS OF THE 2008 TRANSACTION SUBCLASS MAY FILE A CLAIM FOR PAYMENT FROM THE SETTLEMENT FUND CREATED AS A RESULT OF THE 2008 CLASS SETTLEMENT:

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT</b>	
<b>ACTIONS YOU MAY PURSUE</b>	<b>EFFECT OF TAKING THIS ACTION</b>
<p><b><u>FOR MEMBERS OF THE 2008 TRANSACTION SUBCLASS ONLY:</u></b>            FILE A PROOF OF CLAIM BY _____ TO DETERMINE WHETHER YOU ARE ENTITLED TO RECEIVE MONEY.<sup>1</sup></p>	<p>This is the only way for members of the 2008 Transaction Subclass to get a payment from the Settlement Fund. If you wish to obtain a payment as a 2008 Transaction Subclass Member, you will need to file a Proof of Claim form (“Claim Form”) (which is included with this Notice) postmarked no later than _____. For more information about filing a Claim Form, please see Paragraph 22 below.</p>
<p><b><u>FOR ALL CLASS MEMBERS:</u></b>            OBJECT TO THE SETTLEMENTS BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____.</p>	<p>Write to the Court and explain why you do not like the proposed Settlements, the proposed Plan of Allocation, and/or the applications for attorneys’ fees and expenses. For more information regarding filing an objection, please see Paragraphs 25-34 below.</p>
<p><b><u>FOR ALL CLASS MEMBERS:</u></b>            GO TO THE SETTLEMENT HEARING ON _____, 2010 AT _____.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____, 2010.</p>	<p>Ask to speak in the Court about the fairness of the Settlements, the proposed Plan of Allocation, and/or the applications for attorneys’ fees and expenses. For more information about speaking at the Settlement Hearing, please see Paragraphs 25-34 below.</p>
<p><b><u>FOR ALL CLASS MEMBERS:</u></b>            DO NOTHING.</p>	<p>If you are a member of the 2008 Transaction Subclass, you will not receive payment from the Settlement Fund if you do not file a Claim Form. If the Settlements are approved, all Class Members will give up rights to pursue different relief or other remedies. For more information about the claims being settled and released by the Settlements, please see Paragraphs 17-20 below.</p>

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<sup>1</sup> 2009 Transaction Subclass Members who did not hold shares of Landry’s common stock at any point between September 17, 2008 and January 11, 2009, inclusive, are not members of the 2008 Transaction Subclass. If you received this Notice because you are a member of the 2009 Transaction Subclass but you do not qualify as a member of the 2008 Transaction Subclass, you are not eligible for payment from the Settlement Fund and should not file a Proof of Claim.

## WHAT THIS NOTICE CONTAINS

Why Did I Get This Notice? .....	Page _
What Is This Case About? What Has Happened So Far? .....	Page _
How Do I Know If I Am Affected By The Settlements? .....	Page _
What Are Plaintiff's Reasons For The Settlements? .....	Page _
What Are The Benefits Of The 2008 Class Settlement For Members Of The 2008 Transaction Subclass? .....	Page _
What Are The Benefits Of The 2009 Deal Settlement For Members Of The 2009 Transaction Subclass? .....	Page _
If I Am A Member Of The 2008 Transaction Subclass, How Much Will My Payment Be?.....	Page _
What Rights Are Being Compromised By The Settlements?.....	Page _
What Payment Are The Attorneys For The Class Seeking? How Will The Lawyers Be Paid?.....	Page _
If I Am A Member Of The 2008 Transaction Subclass, How Can I Receive A Payment From The Settlement Fund? What Do I Need To Do? .....	Page _
Do I Have A Lawyer In This Case?.....	Page _
When And Where Will The Court Decide Whether To Approve The Settlements? Do I Have To Come To The Hearing? May I Speak At The Hearing If I Don't Like The Settlements? .....	Page _
Can I See The Court File? Whom Should I Contact If I Have Questions? .....	Page _
Special Notice To Securities Brokers And Other Nominees Holding Record Ownership On Behalf Of Others .....	Page _

## WHY DID I GET THIS NOTICE?

1. This Notice is being sent to you pursuant to an order of the Court because you or someone in your family may have held Landry's common stock at any point during the period between and including September 17, 2008 and January 11, 2009 (the "2008 Transaction Subclass Period") **and/or** at any point during the period between November 3, 2009 and the closing of a sale/merger transaction to Fertitta or a third party (the "2009 Transaction Subclass Period"). As a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlements. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlements, (a) the Action will be dismissed with prejudice, (b) Plaintiff, on behalf of itself and the other Class Members, will be deemed to have released certain claims (as set forth in Paragraphs 17 and 19 below), and (c) the claims administrator ("Claims Administrator") selected by the Class Representative (defined in Paragraph 5 below) and approved by the Court will make payments from the Settlement Fund pursuant to the 2008 Class Settlement after any objections and appeals are resolved.
2. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. In a class action lawsuit, the court selects one or more people, known as class

representatives, to sue on behalf of all people with similar claims, commonly known as the class or the class members. Once the settlement class is certified, the Court must resolve all issues on behalf of the class members. In the Action, the Court has directed that the Class Representative (defined in Paragraph 5 below) and Class Counsel (defined in Paragraph 5 below) shall have primary responsibility for prosecuting all claims against Defendants (defined in Paragraph 3 below) on behalf of all Class Members that were or could have been asserted in connection with the transactions that gave rise to the Action.<sup>2</sup>

3. The court in charge of this case is the Court of Chancery of the State of Delaware, and the case is known as *Louisiana Municipal Police Employees' Retirement System v. Tilman J. Fertitta, et al.*, C.A. No. 4339-VCL. The judge presiding over this case is Vice Chancellor J. Travis Laster. The party who is suing is called the "plaintiff" and the parties who are being sued are called the "defendants." In this case, plaintiff LMPERS, on behalf of itself and the Classes, is suing defendant Fertitta; defendants Fertitta Acquisition Co. and Fertitta Holdings, Inc. (the "2008 Fertitta Entities"); defendants Fertitta Merger Co. and Fertitta Group, Inc. (the "2009 Fertitta Entities," and collectively with Fertitta and the 2008 Fertitta Entities, the "Fertitta Defendants"); defendants Kenneth Brimmer, Michael S. Chadwick, Michael Richmond, and Joe Max Taylor (the "Outside Director Defendants"); defendants Steven L. Scheinthal ("Scheinthal") and Richard Liem ("Liem") (together with the Outside Director Defendants, the "Director Defendants"); and nominal defendant Landry's Restaurants, Inc. ("Landry's" or the "Company", referred to collectively with all other defendants as the "Defendants").
4. This Notice explains the lawsuit, the proposed Settlements, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you of this case, that it is a class action, and how you might be affected. It also is being sent to inform you of the terms of the proposed Settlements and of a hearing regarding the Settlements to be held by the Court (the "Settlement Hearing").
5. The Settlement Hearing will be held in the Court of Chancery in the New Castle County Courthouse, 500 North King Street, Wilmington, Delaware, on \_\_\_\_\_, at \_\_:\_\_\_ \_\_.m. to (a) determine whether the Subclasses should be certified permanently, for Settlement purposes, pursuant to Court of Chancery Rules 23(a) and 23(b)(1) and (b)(2); (b) determine whether LMPERS may be designated as class representative for the Subclasses ("Class Representative") with the law firms of Grant & Eisenhofer P.A. and Bernstein Litowitz Berger & Grossmann LLP as class counsel for the Subclasses ("Class Counsel") and whether such Class Representative and Class Counsel have adequately represented the interests of the Classes in the Action; (c) determine whether the terms and conditions of the Stipulation of Partial Settlement dated June 22, 2010 settling and releasing the claims of the 2009 Transaction Subclass with respect to the 2009 Transaction (the "2009 Deal Settlement Stipulation") and the Stipulation of Settlement of Remaining Claims dated July \_\_, 2010 settling and releasing the claims of the 2008 Transaction Subclass with respect to the 2008 Transaction (the "2008 Class Settlement

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<sup>2</sup> Plaintiff has also asserted derivative claims on behalf of the Company that are being settled and released pursuant to the Settlements.

Stipulation,” together with the 2009 Deal Settlement Stipulation, the “Settlement Stipulations”) are fair, reasonable, and adequate and in the best interests of the members of the respective Subclasses and should be approved by the Court; (d) determine whether the Judgments should be entered dismissing the Action with prejudice and settling and releasing the Released Claims against the Released Parties with prejudice as against the Class Representative and the other Class Members, and barring and enjoining prosecution of any and all Released Claims; (e) hear and rule on any objections to the Settlements; (f) consider final approval of the proposed Plan of Allocation set forth in Paragraph 16 below; (g) consider the applications of Class Counsel for awards of attorneys’ fees and expenses and any objections thereto; and (h) rule on other such matters as the Court may deem appropriate.

6. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlements. If the Court approves the 2008 Class Settlement, payments to Authorized Claimants (defined in Paragraph 16 below) will be made after any appeals are resolved and after the completion of all claims processing. Please be patient.

#### **WHAT IS THIS CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

THE DESCRIPTION OF THE ACTION AND SETTLEMENTS WHICH FOLLOWS HAS BEEN PREPARED BY COUNSEL FOR THE PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF FINDINGS OF FACT.

7. On June 16, 2008, Fertitta and the 2008 Fertitta Entities agreed to acquire Landry’s for \$21 per share and to pay a \$24 million reverse termination fee if they did not close the merger transaction in the absence of a contractual termination right (the “\$21 merger agreement” or “2008 merger agreement”).

On September 13, 2008, Hurricane Ike made landfall in Texas, causing damage to a number of Landry’s properties.

On October 7, 2008, Landry’s issued a press release stating that, among other things, the debt financing required to complete the 2008 merger agreement was “in jeopardy.”

On October 17, 2008, the terms of the \$21 merger agreement were amended to lower the acquisition price that Fertitta agreed to pay to \$13.50 per share and by lowering the reverse termination fee to \$15 million.

On January 11, 2009, the \$21 merger agreement (as amended to provide for a \$13.50 per share price to shareholders) was terminated without payment of any termination fee.

On February 5, 2009, Plaintiff filed a complaint in Delaware Chancery Court styled *Louisiana Municipal Police Employees’ Retirement System v. Tilman J. Fertitta, et al.* asserting breach of fiduciary duty claims against Fertitta and the 2008 Fertitta Entities,

the Outside Director Defendants, Scheinthal, and nominal defendant Landry's concerning the amendment and subsequent termination of the \$21 merger agreement and a derivative claim on behalf of Landry's against the Board for failure to seek payment of the \$24 million reverse termination fee. In short, Plaintiff alleged that Fertitta had abused his fiduciary position in order to force a renegotiation of the \$21 merger agreement for self-interested purposes. Plaintiff also alleged that the Outside Director Defendants acted in bad faith in failing to protect Landry's and its shareholders from Fertitta's alleged misconduct. Defendants denied these allegations.

On July 28, 2009, former Vice Chancellor Lamb denied the Defendants' motion to dismiss the Complaint, and discovery thereafter commenced.

On November 3, 2009, Fertitta and the 2009 Fertitta Entities agreed to acquire Landry's for \$14.75 per share (the "\$14.75 merger agreement" or "2009 merger agreement").

On November 10, 2009, Plaintiff supplemented its complaint, asserting breach of fiduciary duty claims against Fertitta and the current Landry's Board concerning the 2009 merger agreement.

On January 28, 2010, Plaintiff filed an amended complaint asserting breach of fiduciary duty claims against: (i) the Fertitta Defendants concerning the 2008 and 2009 merger agreements; (ii) the Director Defendants concerning the 2008 merger agreement; (iii) Fertitta and the Board concerning the 2009 merger agreement; (iv) a claim against Fertitta for unjust enrichment; and (v) a derivative claim against the Board for failure to seek payment of the \$24 million reverse termination fee.

On March 12, 2010, the parties conducted a full-day mediation session with retired United States District Judge Nicholas H. Politan, which did not resolve any of the claims.

On May 17, 2010, the Outside Directors' counsel contacted Class Counsel to discuss the possibility of a partial settlement in connection with the \$14.75 merger agreement, which included a higher price and amended terms relating to the sales process (the "go-shop process").

Between May 18 and 21, 2010, the Special Committee of the Board of Directors of Landry's deal counsel and Fertitta's deal counsel engaged in negotiations with Class Counsel regarding a partial settlement in connection with revising the \$14.75 merger agreement.

On May 21, 2010, Plaintiff filed the Second Amended Verified Class Action and Derivative Complaint asserting breach of fiduciary duty claims against: (i) the Fertitta Defendants concerning the 2008 and 2009 merger agreements; (ii) the Director Defendants concerning the 2008 merger agreement; (iii) Fertitta and the Board concerning the 2009 merger agreement; (iv) a claim for unjust enrichment against Fertitta; (v) a derivative claim against the Board for failure to seek payment of the \$24 million reverse termination fee; and (vi) a derivative breach of contract claim against

Fertitta and Fertitta Acquisition Co. for failure to pay the \$24 million reverse termination fee.

Over the weekend of May 22-23, 2010, following arms-length negotiations, the parties agreed to the terms of an amendment to the \$14.75 merger agreement and the partial settlement of this Action. In consideration of the partial settlement, Defendants and the Special Committee agreed to implement certain deal terms in connection with the 2009 merger agreement, including a \$24 per share price to be paid by Fertitta and/or the 2009 Fertitta Entities, certain voting requirements with respect to the transaction, and amending the terms of the go-shop process. The parties memorialized the basic terms of the partial settlement in a Memorandum of Understanding executed on May 23, 2010. As Class Counsel explained to the Court on May 23, 2010, the largest public shareholder of Landry's, Pershing Square Capital Management L.P. ("Pershing"), had not expressed its views of the renegotiated transaction. The memorandum of understanding documented the terms of the renegotiated 2009 Transaction. The parties subsequently reported to the Court that this partial settlement had been reached.

On May 28, 2010, the Fertitta Defendants and the Outside Director Defendants filed motions to dismiss Plaintiff's Complaint by arguing that: (i) the Securities Litigation Uniform Standards Act ("SLUSA") precluded Plaintiff from pursuing Counts I, II, III and IX, (ii) Counts I, II and IX were based on a fiduciary duty that Delaware law does not recognize, and (iii) Count III should be dismissed because it is a derivative rather than a direct claim.

On June 18, 2010, Plaintiff filed an opposition brief responding to Defendants' motions to dismiss, and on July 2, 2010, Defendants filed reply briefs in support of their motions to dismiss.

Between June 11 and 20, 2010, the Outside Directors' deal counsel, Fertitta's counsel and Pershing's counsel negotiated an increase of the merger consideration to \$24.50 per share, conditioned upon Pershing and certain of its affiliates entering into voting agreements to support Fertitta's revised going private deal. During this time, the Outside Directors' deal counsel informed Class Counsel about the proposed terms, including the voting agreements. Class Counsel indicated that the voting agreements should terminate in the event the Special Committee terminated the merger in favor of any Superior Proposal.

On June 22, 2010, following negotiations, the parties entered into the 2009 Deal Settlement Stipulation memorializing the terms of the May 23, 2010 Memorandum of Understanding. The 2009 Deal Settlement Stipulation sets forth the terms of the 2009 Deal Settlement, which settles and releases certain claims that were asserted and/or could have been asserted against Defendants in connection with Counts IV through VIII of the Complaint. On June 22, 2010, the parties submitted the 2009 Deal Settlement Stipulation to the Court, which resulted in the Court entering a scheduling order on June 28, 2010 that preliminarily, for purposes of the 2008 Deal Settlement only, certified the 2009 Transaction Subclass and directed that notice of the 2009 Deal Settlement be provided to the 2009 Transaction Subclass Members. The proposed notice filed as part of the 2009

Deal Settlement Stipulation and approved by the Court for dissemination to 2009 Transaction Subclass Members disclosed that no agreement had been reached in respect of the amount of any award of attorneys' fees to Class Counsel in connection with the 2009 Deal Settlement, but that Class Counsel reserved the right to apply for up to \$15 million in fees and \$525,000 in expenses (and that Defendants reserved the right to object to such application).

On July 7, 2010, the parties conducted a full-day mediation session with retired United States District Judge Nicholas H. Politan, which resulted in the parties reaching an agreement in principle to settle the remaining claims asserted against Defendants in the Complaint. The parties memorialized the principal terms of the settlement in a Term Sheet executed on July 14, 2010.

During the negotiations on July 7, 2010, the parties first negotiated the terms of the 2008 Class Settlement. After the parties reached substantial agreement with respect to the amount to be paid to the Settlement Fund for the benefit of 2008 Transaction Subclass Members, the parties (through the mediator) negotiated a fee for Class Counsel related to the 2009 Deal Settlement.

On July \_\_, 2010, the parties entered into the 2008 Class Settlement Stipulation that memorialized the terms of the July 14, 2010 Term Sheet. The 2008 Class Settlement Stipulation sets forth the terms of the 2008 Class Settlement, which settles and releases the claims asserted against Defendants in Counts I, II, III and IX of the Complaint only. On July \_\_, 2010, the parties submitted the 2008 Class Settlement Stipulation to the Court, which resulted in the Court entering a scheduling order on \_\_\_\_\_, 2010, that preliminarily, for purposes of the 2008 Class Settlement only, certified the 2008 Transaction Subclass and directed that notice of the 2008 Class Settlement be provided to the 2008 Transaction Subclass Members. At the request of the parties, the \_\_\_\_\_, 2010 Scheduling Order amended the June 28, 2010 scheduling order to allow notice of the 2009 Deal Settlement to be combined with notice of the 2008 Class Settlement, as provided herein.

#### HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENTS?

8. **2008 Transaction Subclass Members:** If you are a member of the 2008 Transaction Subclass, you are subject to the 2008 Class Settlement. The 2008 Transaction Subclass certified by the Court, for Settlement purposes only, consists of all persons and entities who held shares of Landry's common stock at any time between and including September 17, 2008 and January 11, 2009. Excluded from the 2008 Transaction Subclass are: Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry's and the Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

9. **2009 Transaction Subclass Members:** If you are a member of the 2009 Transaction Subclass, you are subject to the 2009 Deal Settlement. The 2009 Transaction Subclass certified by the Court, for Settlement purposes only, consists of all persons and entities who held shares of Landry's common stock at any time between and including November 3, 2009 and the closing of a sale/merger transaction to Fertitta or a third party. Excluded from the 2009 Transaction Subclass are: Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry's and the Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

**RECEIPT OF THIS NOTICE DOES NOT NECESSARILY MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU ARE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT FUND. IF YOU ARE A MEMBER OF THE 2008 TRANSACTION SUBCLASS AND WISH TO RECEIVE A PAYMENT FROM SETTLEMENT FUND, YOU MUST SUBMIT A COMPLETED PROOF OF CLAIM FORM POSTMARKED NO LATER THAN \_\_\_\_\_. BEFORE YOU FILE YOUR CLAIM, PLEASE READ THE PLAN OF ALLOCATION SET FORTH IN PARAGRAPH 16 BELOW TO DETERMINE IF YOU ARE ELIGIBLE FOR RECOVERY FROM THE SETTLEMENT FUND.**

**WHAT ARE PLAINTIFF'S REASONS FOR THE SETTLEMENTS?**

10. Plaintiff and its counsel have reviewed and analyzed the facts and circumstances relating to the claims asserted in the Action, as known by Plaintiff to date. Plaintiff has reviewed more than 600,000 pages of documents, taken more than a dozen depositions, and hired experts. Class Counsel have analyzed the evidence adduced during their investigation and pretrial discovery and have researched the applicable law with respect to the claims of Plaintiff and the Classes against Defendants and the potential defenses thereto.
11. Based on this investigation and pre-trial discovery, Plaintiff has decided to enter into the Stipulations and to settle the Action, after taking into account, among other things, (1) the substantial benefits provided to Class Members as a result of the litigation of the Action and the proposed Settlements; (2) the risks of continued litigation in this Action; and (3) the conclusion reached by the parties and their counsel that the Settlements upon the terms and provisions set forth in the Settlement Stipulations are fair, reasonable, adequate, and in the best interests of the respective Classes and will result in material benefits to them.
12. More specifically, as to the 2009 Deal Settlement, Plaintiff believed and believes that Class Counsel negotiated the best possible result, including the combination of procedural and voting protections included in the 2009 Deal Settlement and the increased consideration to be paid from the \$14.75 per share price originally accepted by the Outside Director Defendants. As to the 2008 Transaction Settlement, Plaintiff recognized that although it viewed the evidence set forth in the Complaint and the further evidence that would be presented at trial to present a basis to find misconduct,

Defendants had raised certain defenses, including with respect to the ability of 2008 Transaction Subclass Members to participate in any judgment entered by the Court of Chancery, that created a risk of no recovery. Moreover, based on consultation with damages experts and an analysis of trading patterns and other relevant factors, Class Counsel believed and believe that the Settlement Fund is sufficiently large that 2008 Transaction Subclass Members will obtain monetary compensation covering a significant portion of any out-of-pocket losses.

13. Defendants in the Action have denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law or engaged in any of the wrongful acts alleged in the Action, and expressly maintain that they complied with their fiduciary and other legal duties, and assert that they are entering into the Settlements solely because the Settlements will eliminate the burden and expense of further litigation.

**WHAT ARE THE BENEFITS OF THE 2008 CLASS SETTLEMENT FOR MEMBERS OF THE 2008 TRANSACTION SUBCLASS?**

14. In consideration of the 2008 Class Settlement, Defendants or their successor(s)-in-interest have agreed to pay or caused to be paid \$14,500,000 in cash (the "Settlement Amount") into an interest-bearing escrow account for the benefit of the 2008 Transaction Subclass. The Settlement Amount and any and all interest earned thereon is referred to as the "Settlement Fund."

**WHAT ARE THE BENEFITS OF THE 2009 DEAL SETTLEMENT FOR MEMBERS OF THE 2009 TRANSACTION SUBCLASS?**

15. In consideration of the Deal Settlement, Defendants and the Special Committee of the Board of Directors of Landry's, comprised of Defendants Kenneth Brimmer and Michael S. Chadwick, have agreed to implement the following deal terms with respect to the 2009 Transaction:

**Price Paid to Non-Fertitta Shareholders in New Deal:**

If the 2009 Deal Settlement is approved and other conditions set forth in the current amendment to the 2009 merger agreement are satisfied, the merger consideration will have increased from the \$14.75 per share in the original version of the agreement to \$24.50 per share, for an aggregate increase of approximately \$65 million to be paid to the 2009 Transaction Subclass Members.

**New Go-Shop Process:**

Pursuant to the 2009 Deal Settlement, the Special Committee sent letters (the text of which were reviewed by Plaintiff) to all prior participants in the sales process, explaining that all offers will be considered, whether or not Fertitta is asked to remain with the Company. The Special Committee agreed to conduct an active process which remained open for 45 days in order to permit all bidders to emerge with the option for a 15 day or longer extension for due diligence if the Special Committee deemed necessary.

The Special Committee made public the pertinent details of the new process through a Form 8-K (the text of which was reviewed by Plaintiff). Class Counsel negotiated for and had the ability to stay informed of any material communications between the Special Committee or its advisors and any interested bidder.

**Waiver of Standstills:**

When potentially interested bidders previously reviewed the Company's private information, they typically executed agreements, called "standstill," that precluded them from making bids after the termination of the prior sales process. As part of the 2009 Deal Settlement, the Special Committee agreed to waive existing standstills, except for hostile offers, during the go shop process in order to permit non-hostile proposals to acquire the Company.

**Termination Fee to Fertitta and Other Deal Protections:**

Any third party considering a bid for the Company in competition with Fertitta's offer would have, under the 2009 merger agreement as originally drafted, been required to pay a termination fee to Fertitta. The 2009 Deal Settlement provided that no termination fee would be paid to Fertitta, who instead would only be reimbursed for actual expenses. In addition, in order to ensure that third parties were not deterred by prior contractual "matching rights" in which Fertitta would always get a "last look" opportunity to match any competing offer, the 2009 Deal Settlement provided that Fertitta would not receive a contractual last look option. The Special Committee had the right ultimately to give Fertitta an opportunity to top any superior proposals if providing that opportunity is, in the Committee's judgment, consistent with share value maximization. If the Special Committee provided that opportunity to Fertitta, however, they were required to provide any other bidder who has made a superior proposal with the same opportunity to top any superior proposal by Fertitta.

**Cost Reimbursement for Potential Bidders' Due Diligence Costs:**

In order to create an active go shop process, Landry's agreed to reimburse up to \$500,000 in actual out of pocket due diligence costs for each of up to the two highest bidders that would submit a proposal to acquire the Company at a price that exceeds \$24 per share that was reasonably likely to lead to a Superior Proposal, and the Special Committee concluded the bidder is reasonably likely to be capable, including from a financial perspective, of closing on such a Superior Proposal.

**Voting of Fertitta's Shares from Open Market Purchases after June 2008:**

As part of the 2009 Deal Settlement, in connection with the shareholder vote on any alternative acquisition transaction (*i.e.*, by a third party), Fertitta retained his discretion to vote the 5,731,481 shares that he held as of June 16, 2008, plus up to the first 300,000 shares acquired upon exercise of his outstanding options, either for or against such transaction. Fertitta agreed, however, that the 3,162,674 shares Fertitta purchased on the open market after June 16, 2008, plus up to the next 500,000 shares acquired upon exercise of his outstanding options ("Fertitta's post-June 2008 Shares"), would be voted in proportion to how the minority actually votes on any proposed transaction (abstentions will be counted as "no" votes for purposes of calculating how Fertitta's post-June 2008

Shares are voted) with respect to (i) the adoption of the merger agreement and the approval of the merger and (ii) any acquisition proposal that results in the termination of the merger agreement.

The transaction with Fertitta was made subject to approval by a majority of Landry's shares voted at the special meeting and not owned by any of the Defendants or any of their affiliates.

**Proxy Disclosures:**

Plaintiff had the right to review and provide comments and proposed changes to a supplemental proxy and the Company and Special Committee agreed to use their best efforts to consider and incorporate Plaintiff's reasonable suggestions. The final decision on disclosures was left up to the Special Committee, to be made in good faith and consistent with the Special Committee's fiduciary duties.

**IF I AM A MEMBER OF THE 2008 TRANSACTION SUBCLASS,  
HOW MUCH WILL MY PAYMENT BE?**

16. If the 2008 Class Settlement and proposed Plan of Allocation are approved by the Court, payments to 2008 Transaction Subclass Members will be determined as follows:

**THE PROPOSED PLAN OF ALLOCATION**

**I. GENERAL PROVISIONS**

A. As explained in paragraph 14 above, Defendants have agreed to pay or caused to be paid \$14,500,000 in cash into escrow for the benefit of the 2008 Transaction Subclass. The \$14,500,000 cash settlement amount plus all interest earned thereon is referred to throughout this Notice as the "Settlement Fund".

B. The "Net Settlement Fund" means the Settlement Fund less (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund and the reasonable expenses and costs incurred by Class Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants); (ii) all fees, costs and expenses paid or incurred in connection with the notice and administration of the 2008 Class Settlement that are payable from the Settlement Fund pursuant to the agreement of the parties; and (iii) any attorneys' fees and expenses awarded to Class Counsel in connection with the 2008 Class Settlement.

C. The Net Settlement Fund will be distributed to all 2008 Transaction Subclass Members who submit timely and valid Claim Forms to the Claims Administrator that are accepted by the Court for payment from the Net Settlement Fund ("Authorized Claimants").

D. The Net Settlement Fund will not be distributed to Authorized Claimants until the Court has issued a final order of approval of the 2008 Class Settlement and the Court has also issued an order approving the proposed Plan of Allocation (or such other allocation plan as the Court may approve), and the time periods for any petition for rehearing, appeal or review,

whether by certiorari or otherwise, of the order approving the 2008 Class Settlement and the order approving the Plan of Allocation have expired.

E. Defendants are not entitled to get back any portion of the Settlement Fund once the Court has issued an order approving the 2008 Class Settlement, and the time periods for any petition for rehearing, appeal or review, whether by certiorari or otherwise, of the order approving the 2008 Class Settlement have expired. Defendants shall not have any liability, obligation or responsibility for the administration of the 2008 Class Settlement or disbursement of the Net Settlement Fund or for the Plan of Allocation.

F. Approval of the 2008 Class Settlement is independent from approval of the Plan of Allocation. Any determination with respect to the Plan of Allocation will not affect the 2008 Class Settlement, if approved.

G. Only those 2008 Transaction Subclass Members who sold shares of Landry's common stock will be eligible to share in the distribution of the Net Settlement Fund. Each person or entity wishing to participate in the distribution must timely submit a valid Claim Form establishing membership in the 2008 Transaction Subclass, including all required documentation, postmarked no later than \_\_\_\_\_, 2010 to the address set forth in the Claim Form. Unless the Court otherwise orders, a 2008 Transaction Subclass Member who fails to submit a properly completed Claim Form postmarked no later than \_\_\_\_\_, 2010 shall be forever barred from receiving payments pursuant to the 2008 Class Settlement set forth in the 2008 Class Settlement Stipulation but will in all other respects remain a 2008 Transaction Subclass Member and be subject to the provisions of the 2008 Class Settlement Stipulation, including the terms of any Judgment entered and releases given. As set forth in Paragraph 17 below, this means that each 2008 Transaction Subclass Member releases the Settled Claims against the Released Parties and is barred and enjoined from filing, prosecuting, or pursuing any of the Settled Claims against any of the Released Parties regardless of whether or not such Subclass Member submits a Claim Form.

I. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Proof of Claim of any 2008 Transaction Subclass Member.

J. The Plan of Allocation set forth herein is the plan that is being proposed by Plaintiff and Class Counsel to the Court for approval. The Court has reserved the right to modify the Plan of Allocation without further notice to 2008 Transaction Subclass Members. Any Orders regarding a modification of the Plan of Allocation will be posted on the settlement website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

K. Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiff, Class Counsel, Defendants, Defendants' Counsel, the other Released Parties or their counsel, or the Claims Administrator or other agent designated by Class Counsel arising from distributions made substantially in accordance with the 2008 Class Settlement Stipulation, the Plan of Allocation, or further orders of the Court. Plaintiff, Defendants, their respective counsel, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, or the

determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

L. **Information Required on the Claim Form:** Each Claim Form must state and provide sufficient documentation for each Authorized Claimant's position in Landry's common stock as of the close of business on September 16, 2008, the day before the first day of the 2008 Transaction Subclass Period. Each Claim Form also must list and provide sufficient documentation for all purchases of Landry's common stock on or after September 17, 2008 through the date the Claimant files the Claim Form, all sales of Landry's common stock on or after September 17, 2008, and all unsold holdings of Landry's common stock as of the date of filing of the Claim Form.

## **II. CALCULATION OF RECOGNIZED CLAIM AMOUNTS**

To share in the distribution of the Net Settlement Fund, an Authorized Claimant must have had a cognizable claim of harm arising from the alleged breaches of duty being settled under the 2008 Class Settlement. If a Claimant did not sell shares of Landry's common stock on or after September 17, 2008, he, she or it did not suffer a cognizable claim of harm arising from the alleged breaches of duty being settled under the 2008 Class Settlement, and, therefore, his, her or its "Recognized Loss Amount" shall be zero. In addition (a) for shares purchased on or before October 17, 2008, a Claimant suffered a cognizable claim of harm only with respect to those shares that were sold for less than \$21.00 per share; and (b) for shares purchased during the period from October 18, 2008 through and including January 11, 2009, a Claimant suffered a cognizable claim of harm only with respect to those shares that were sold for less than \$13.50 per share.

A "Recognized Loss Amount" will be calculated for each share of Landry's common stock both held during the 2008 Transaction Subclass Period and sold during the 2008 Transaction Subclass Period or thereafter as follows:

(A) For shares purchased on or before October 6, 2008:

(1) And sold for less than \$21.00 per share during the period from September 17, 2008 through and including October 6, 2008, the Recognized Loss Amount per share shall be 25% of the difference between \$21.00 and the sale price;

(2) And sold for less than \$21.00 per share on or after October 7, 2008, the Recognized Loss Amount per share shall be the difference between \$21.00 and the sale price;

(B) For shares purchased during the period from October 7, 2008 through and including October 17, 2008 and sold for less than \$21.00 per share, the Recognized Loss Amount per share shall be 50% of the difference between \$21.00 and the sale price.

(C) For shares purchased during the period from October 18, 2008 through and including January 11, 2009 and sold for less than \$13.50 per share, the Recognized Loss Amount per share shall be the difference between \$13.50 and the sale price.

### III. BASIS FOR RECOGNIZED LOSS AMOUNT CALCULATIONS

Class Counsel believe that the proposed Plan of Allocation reasonably and equitably distributes the Net Settlement Fund among 2008 Transaction Subclass Members with cognizable claims of harm arising from alleged breaches of duty being settled under the 2008 Class Settlement.

According to Class Counsel, the alleged breaches of duty began on or about September 17, 2008, which starts the 2008 Transaction Subclass Period. On that date, news reports suggested that Hurricane Ike may create a risk to the consummation of the pending \$21 per share buyout of the Company, including with quotes attributed to Mr. Fertitta. However, Mr. Fertitta was also quoted making statements that were generally positive about the Company's ability to respond to the effects of the Hurricane. Class Counsel believes that as a result of this mix of information, 2008 Transaction Subclass Members who sold their shares on or after September 17, 2008 but before October 7, 2008 (*i.e.*, transactions covered by category (a)(1) above), did so, in the judgment of Class Counsel, based on limited public notice of the alleged breaches of fiduciary duty alleged by the 2008 Transaction Subclass. Because sales before October 7, 2008 are less likely to have been made in response to those alleged breaches of fiduciary duty, Class Counsel believe that a substantial discount is appropriate in allocating the Net Settlement Fund to category (a)(1) transactions. Consequently, category (a)(1) transactions will receive a credit for 25% of the difference between the expected \$21 Buyout price and the actual sale price for purposes of allocating the Net Settlement Fund.

On October 7, 2008, Landry's issued a press release disclosing that the debt financing required to complete the \$21 Buyout was "in jeopardy." Class Counsel believe that 2008 Transaction Subclass Members who held Landry's shares as of the time of this press release and sold thereafter for a price less than \$21 per share (*i.e.*, transactions covered by category (a)(2) above) can most clearly tie their damages to the alleged breaches of fiduciary duty. In Class Counsel's judgment, category (a)(2) transactions should receive a non-discounted allocation from the Net Settlement Fund, based on the difference between the expected \$21 Buyout price and the actual sale price.

Class Counsel believe that 2008 Transaction Subclass Members who purchased their Landry's shares after the October 7, 2008 press release discussed above but before the October 18 renegotiation of the \$21 Buyout and sold for a price less than \$21 per share (*i.e.*, transactions covered by category (b) above) are eligible to participate in the 2008 Class Settlement because, notwithstanding the October 7 press release, such Class Members were entitled to expect reasonable and faithful adherence to fiduciary duties by the Defendants. However, 2008 Transaction Subclass Members making category (b) transactions were on notice that the \$21 Buyout was "in jeopardy," and therefore, in Class Counsel's judgment, should receive a credit for 50% of the difference between the expected \$21 Buyout price and the actual sale price for purposes of allocating the Net Settlement Fund.

Class Counsel further believe that 2008 Transaction Subclass Members who purchased their shares after the October 18, 2008 announcement of the renegotiation of the \$21 Buyout to the \$13.50 Buyout price and who thereafter sold for a price less than \$13.50 per share (*i.e.*, transactions in category (c) above), are able to tie their economic harm to the alleged breaches of

duty, but only had a cognizable expectation of receiving \$13.50 for their shares. Therefore, in Class Counsel's judgment, Class Members' transactions fitting within category (c) above should receive full credit for the difference between \$13.50 and the price at which they subsequently sold their shares for purposes of allocating the Net Settlement Fund.

Defendants deny that they have committed or aided and abetted in the commission of any violation of law or engaged in any of the wrongful acts alleged in the Action and made the basis of this Plan of Allocation, and expressly maintain that they complied with their fiduciary and other legal duties.

### **III. ADDITIONAL PROVISIONS**

A. Each Authorized Claimant's "Recognized Claim" shall be the total of his, her or its Recognized Loss Amounts. The Net Settlement Fund will be distributed to Authorized Claimants who have a Recognized Claim greater than \$0, subject to the \$10.00 threshold for payments set forth below.

B. If the sum total of Recognized Claims of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, however, each such Authorized Claimant shall receive his, her, or its *pro rata* share of the Net Settlement Fund. The *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of all Recognized Claims to be paid from the Net Settlement Fund, multiplied by the total amount in the Net Settlement Fund. If the prorated payment calculates to less than \$10.00, it will not be included in the calculation and it will not be distributed.

C. If the Net Settlement Fund exceeds the sum total amount of the Recognized Claims of all Authorized Claimants entitled to receive payment out of the Net Settlement Fund, the excess amount in the Net Settlement Fund shall be distributed *pro rata* to all Authorized Claimants entitled to receive payment.

D. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the 2008 Class Settlement. All checks shall become stale ninety (90) calendar days from the date of issuance, at which time all funds remaining for such stale checks shall be irrevocably forfeited and such funds shall be made available to be redistributed. Following the distribution, the Claims Administrator shall use reasonable efforts to have Authorized Claimants cash their distribution checks. Subsequent to the passage of six (6) months from the distribution, if Class Counsel, in consultation with the Claims Administrator, determines that it is cost-effective to do so, the Claims Administrator will conduct a re-distribution of any funds remaining in the Net Settlement Fund by reason of returned or uncashed checks or otherwise, to Authorized Claimants who have cashed their distribution checks and who would receive at least \$10.00 on such re-distribution based on their Recognized Claims, after payment from the Net Settlement Fund of any unpaid costs or fees incurred in administering the funds, including for such re-distribution. Additional re-distributions may occur thereafter to Authorized Claimants in three (3)-month intervals if Class Counsel, in consultation with the Claims Administrator, determines that additional re-distribution is cost-effective. At any such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement

Fund shall be contributed to non-sectarian, not-for-profit 501(c)(3) organizations recommended by Class Counsel and Defendants' Counsel, and approved by the Court.

E. To calculate the Recognized Loss Amount for each share of Landry's common stock, sales of Landry's common stock shall be matched against purchases on a First In, First Out ("FIFO") method, such that all sales will be matched first against any shares of Landry's common stock held at the beginning of the 2008 Transaction Subclass Period, and then against purchases in chronological order, beginning with the earliest purchase made during the 2008 Transaction Subclass Period. Purchases and sales of Landry's common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date.

F. The date of covering a "short sale" is deemed to be the date of purchase of Landry's common stock shares. The date of a "short sale" is deemed to be the date of sale of Landry's common stock shares. The Recognized Loss Amount for "short sales" is zero. In the event that there is an opening short position in Landry's common stock, the earliest 2008 Transaction Subclass Period purchases shall be matched against such opening short position, and not be matched against sales, until that short position is fully covered.

G. Option contracts are not securities eligible to participate in the 2008 Class Settlement. Accordingly, (a) shares sold through the assignment of a call option shall be treated as sold on the date of exercise for the closing price of Landry's common stock on the date of exercise; and (b) shares sold through the exercise of a put option shall be treated as sold on the date of exercise for the put option strike price.

H. Each Claimant shall be deemed to have submitted to the jurisdiction of the Chancery Court of the State of Delaware with respect to his, her or its Claim Form.

#### **WHAT RIGHTS ARE BEING COMPROMISED BY THE SETTLEMENTS?**

17. **Settlement and Release of Claims with respect to the 2008 Class Settlement:** If the 2008 Class Settlement is approved, the Court will enter a judgment (the "2008 Class Judgment"). The 2008 Class Judgment will dismiss with prejudice Counts I, II, III and IX of the Complaint and will provide that Plaintiff and the 2008 Transaction Subclass Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall release, waive, discharge and dismiss any and all Settled Claims (as defined below with respect to the 2008 Class Settlement), and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Claims, against all Released Parties (as defined below with respect to the 2008 Class Settlement).

(a) The "Settled Claims" with respect to the 2008 Class Settlement means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity,

matured or un-matured, whether class, individual or derivative in nature, including both known claims and Unknown Claims (as defined in the 2008 Class Settlement Stipulation), (i) that have been asserted in any count of the Complaint or (ii) that could have been asserted in any forum by Plaintiff (on behalf of itself and/or Landry's) or any 2008 Transaction Subclass Member which (even in part) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to any count of the Complaint and which (even in part) arise out of Plaintiff's or the 2008 Transaction Subclass Members' status as stockholders, buyers, or sellers of Landry's common stock at any point between September 17, 2008 and January 11, 2009, inclusive (except for claims to enforce the Settlement).

(b) The "Released Parties" with respect to the 2008 Class Settlement means any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, counsel, insurers, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of the Defendants.

18. **Preliminary Injunction with respect to the 2008 Class Settlement:** Pending the Court's determination as to final approval of the 2008 Class Settlement, Plaintiff and all members of the 2008 Transaction Subclass, or any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any claim related, directly or indirectly, to any Settled Claims, against any of the Released Persons.

19. **Settlement and Release of Claims with respect to the 2009 Deal Settlement:** If the 2009 Deal Settlement is approved, the Court will enter a judgment (the "2009 Deal Judgment"). The 2009 Deal Judgment will dismiss with prejudice Counts IV through VIII of the Complaint and will provide that Plaintiff and the 2009 Transaction Subclass Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall release, waive, discharge and dismiss any and all Settled Claims (as defined below with respect to the 2009 Deal Settlement), and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Claims, against all Released Parties (as defined below with respect to the 2009 Deal Settlement), their counsel and insurers.

(a) The "Settled Claims" with respect to the 2009 Deal Settlement means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, individual or derivative in nature, including both known claims and unknown claims, (i) that have been asserted in Counts IV through VIII of the Complaint or (ii) that could have been asserted in any forum by Plaintiff (on behalf of itself, the 2009 Transaction Subclass and/or Landry's) or any 2009 Transaction

Subclass Member against any of the Released Parties, their counsel and insurers which arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to Counts IV through VIII of the Complaint and which arise out of Plaintiff's or the 2009 Transaction Subclass Members' status as shareholders of Landry's common stock at any point between the November 3, 2009 announcement of the \$14.75 Buyout and the closing of a sale/merger to Fertitta or a third party (except for claims to enforce the Settlement).

(b) The "Released Parties" with respect to the 2009 Deal Settlement means any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the representatives, heirs, successors-in-interest or assigns of the Defendants.

20. **Preliminary Injunction with respect to the 2009 Deal Settlement:** Pending the Court's determination as to final approval of the 2009 Deal Settlement, Plaintiff and all members of the 2009 Transaction Subclass, or any of them, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any claim related, directly or indirectly, to any Settled Claims, against any of the Released Parties, their counsel and insurers.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?**

21. Class Counsel have not received any payment for their services in pursuing claims against Defendants on behalf of the Classes, nor have Class Counsel been reimbursed for their out-of-pocket expenses.

**Application for Attorneys' Fees in connection with the 2009 Deal Settlement:** In connection with the terms of the 2009 Deal Settlement, Class Counsel reserved the right to apply to the Court for an award of attorneys' fees not to exceed \$15,000,000 and expenses not to exceed \$525,000 to be paid by Landry's or its successor(s)-in-interest. Defendants reserved the right to oppose the amount of any request for attorneys' fees. After submission of the terms of the 2009 Deal Settlement to the Court and substantial completion of the agreement as to the amount to be paid to the 2008 Transaction Subclass, Class Counsel and Defendants agreed that Class Counsel would seek (and Defendants would not oppose) an application to the Court for an award of attorneys' fees and expenses in connection with the 2009 Deal Settlement not to exceed \$8 million as described herein.

Concurrent with seeking final approval of the 2009 Deal Settlement, Class Counsel may apply to the Court for an award of attorneys' fees and expenses in connection with this Settlement. Defendants shall not object to the timing of Class Counsel's application for an award of attorneys' fees and expenses in connection with the 2009 Deal Settlement. Class Counsel has agreed to apply for an award of attorneys' fees and expenses in connection with the 2009 Deal Settlement not to exceed \$8,000,000, and Defendants have

agreed not to oppose the entry of such an award of attorneys' fees and expenses not to exceed \$8,000,000; provided, however, that such award shall be subject to the consummation of the 2008 Class Settlement. Notwithstanding the preceding, no award can occur or payment be made of fees or expenses in connection with this Settlement until the closing of a sale/merger of the Company to Fertitta or a third party. Landry's or its successor(s)-in-interest shall pay any attorneys' fees and expenses awarded by the Court to Class Counsel in connection with the benefits of the Settlement to the 2009 Transaction Subclass and/or Landry's.

If, for any reason, the 2008 Class Settlement should fail to be consummated, (i) the Court's award of attorneys' fees and expenses provided for herein shall be vacated, (ii) Class Counsel shall retain the right to apply to the Court for an award for an award of attorneys' fees not to exceed \$15,000,000 and expenses not to exceed \$525,000 to be paid by Landry's or its successor(s)-in-interest, and (iii) Defendants shall retain the right to object to Class Counsel's application.

**Application for Attorneys' Fees in connection with the 2008 Class Settlement:** In connection with the 2008 Class Settlement, Class Counsel will apply to the Court for an award of attorneys' fees not to exceed 25% of the Settlement Fund. Class Counsel will also apply to the Court for reimbursement of litigation expenses to be paid from the Settlement Fund not to exceed \$750,000. Neither Defendants nor their counsel shall take any position with respect to Class Counsel's application for an award of attorneys' fees and/or litigation expenses. Subject to the approval of the Court, such amounts as are awarded by the Court shall be paid to Class Counsel from the Settlement Fund.

The Court will determine the amount of the fees and expenses awarded with respect to both Settlements.

**IF I AM A MEMBER OF THE 2008 TRANSACTION SUBCLASS, HOW CAN I RECEIVE A PAYMENT FROM THE SETTLEMENT FUND? WHAT DO I NEED TO DO?**

22. If you are a 2008 Transaction Subclass Member, you must submit a Claim Form and supporting documentation to establish your entitlement to share in the Settlement Fund.<sup>3</sup> You must submit your Claim Form to the Claims Administrator, addressed to \_\_\_\_\_, postmarked no later than \_\_\_\_\_. A Claim Form is included with this Notice, or you may go to the website maintained by the Claims Administrator for the Settlement to request that a Claim Form be mailed to you. The website is [www.\\_\\_\\_\\_\\_.com](http://www._____.com). You may also request a Claim Form by calling toll-free \_\_\_\_\_. Those who do not submit timely and valid Claim Forms with adequate supporting documentation will not be entitled to share in the Settlement.

<sup>3</sup> As described in footnote 1 above, if you received this Notice because you are a member of the 2009 Transaction Subclass but you do not qualify as a member of the 2008 Transaction Subclass, you are not eligible for payment from the Settlement Fund and should not file a Claim Form.

Please retain all records of your ownership of or transactions in Landry's common stock, as they may be needed to document your claim.

Before you file your claim, please read the Plan of Allocation set forth in Paragraph 16 above to determine if you are eligible for recovery from the Settlement Fund.

**DO I HAVE A LAWYER IN THIS CASE?**

23. As a Class Member, you are represented by the Class Representative and Class Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlements?" below.
24. If you wish to object to the Settlements or any of their terms, the proposed Plan of Allocation, or Class Counsel's applications for attorneys' fees and expenses, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlements?" below.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENTS? DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENTS?**

25. **If you do not wish to object in person to the proposed Settlements, the proposed Plan of Allocation, and/or the applications for attorneys' fees and reimbursement of litigation expenses, you do not need to attend the Settlement Hearing. You can object to the Settlements without attending the Settlement Hearing.**
26. The Court has scheduled the Settlement Hearing for \_\_\_\_\_, 2010, at \_\_:\_\_ \_\_.m., in the Court of Chancery in the New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801. The Court reserves the right to approve the Settlements, the Plan of Allocation, or Class Counsel's applications for attorneys' fees and expenses at or after the Settlement Hearing without further notice to the members of the Classes.
27. Members of the 2008 Transaction Subclass may only object to the 2008 Class Settlement, the Plan of Allocation, or Class Counsel's request for an award of attorneys' fees and expenses in connection with the 2008 Class Settlement. Members of the 2009 Transaction Subclass may only object to the 2009 Deal Settlement or Class Counsel's request for an award of attorneys' fees and expenses in connection with the 2009 Deal Settlement.
28. Objections or oppositions must be in writing. You must file any written objection or opposition, together with copies of all other papers and briefs, with the Register in Chancery, New Castle County Courthouse, 500 North King Street, Wilmington, DE

19801. You must also serve the papers on the following counsel of record so that the papers are **received** on or before \_\_\_\_\_, 2010:

Mark Lebovitch  
BERNSTEIN LITOWITZ BERGER &  
GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019

Mary S. Thomas  
GRANT & EISENHOFER P.A.  
1201 N. Market St.  
Wilmington, DE 19801

*Class Counsel*

David J. Teklits  
MORRIS, NICHOLS, ARSHT &  
TUNNELL LLP  
1201 North Market Street, 18th Floor  
P.O. Box 1347  
Wilmington, DE 19899

Gerard G. Pecht  
FULBRIGHT & JAWORSKI L.L.P.  
1301 McKinney, Suite 5100  
Houston, TX 77010

*Counsel for Defendants Kenneth Brimmer, Michael S.  
Chadwick, Michael Richmond and Joe Max Taylor*

Thomas A. Beck  
Daniel A. Dreisbach  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 N. Market Street  
Wilmington, DE 19801

David D. Sterling  
Danny David  
BAKER BOTTS L.L.P.  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002

*Counsel for Defendants Tilman J. Fertitta, Steven L. Scheinthal, Fertitta Holdings, Inc., Fertitta Acquisition Co., Richard Liem, Fertitta Group, Inc. and Fertitta Merger Co.*

Bruce L. Silverstein  
Elena C. Norman  
YOUNG CONAWAY STARGATT & TAYLOR LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801

Odean L. Volker  
HAYNES AND BOONE, LLP  
One Houston Center  
1221 McKinney, Suite 2100  
Houston, TX 77010

*Counsel for Nominal Defendant Landry's Restaurants, Inc.*

29. The filing must demonstrate your membership in the 2008 Transaction Subclass and/or the 2009 Transaction Subclass, including proof that you held Landry's common stock during the relevant Subclass Period.
30. You may file a written objection without having to appear at the Settlement Hearing. You may not appear at the Settlement Hearing to present your objection, however, unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

31. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, the Plan of Allocation, or Class Counsel's requests for awards of attorneys' fees and expenses, and if you have filed and served a timely written objection as described above, you also must notify the above counsel on or before \_\_\_\_\_, 2010 concerning your intention to appear. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing.
32. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. If you decide to hire an attorney, which will be at your own expense, however, he or she must file a notice of appearance with the Court and serve it on the counsel listed in Paragraph 28 above so that the notice is received on or before \_\_\_\_\_, 2010.
33. The Settlement Hearing may be adjourned by the Court without further written notice to the Classes. If you intend to attend the Settlement Hearing, you should confirm the date and time with Class Counsel.
34. **Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlements, the proposed Plan of Allocation, or Class Counsel's requests for awards of attorneys' fees and reimbursement of expenses. Class Members do not need to appear at the hearing or take any other action to indicate their approval.**

**CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

35. This Notice does not purport to be a comprehensive description of the Action, the allegations or transactions related thereto, the terms of the Settlements, or the Settlement Hearing. For a more detailed statement of the matters involved in this litigation, you may inspect the pleadings, the Settlement Stipulations, the Orders entered by the Court of Chancery, and other papers filed in the Action, unless sealed, at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, New Castle County Courthouse, 500 North King Street, Wilmington, DE 19801, during regular business hours of each business day. In addition, certain of the pleadings and court filings, including the Complaint, the defendants' recent motions to dismiss and Plaintiff's opposition brief to the motions to dismiss, are available on the internet at the settlement website, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

DO NOT WRITE OR TELEPHONE THE COURT. Questions regarding the Settlement should be directed to Class Counsel as follows:

Mary S. Thomas, Esq.  
GRANT & EISENHOFER P.A.  
1201 North Market Street  
Wilmington, DE 19801

Or

Mark Lebovitch, Esq.  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
1285 Avenue of the Americas  
New York, NY 10019

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES  
HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS**

36. If you held Landry's common stock during the 2009 Transaction Subclass Period (November 3, 2009 through and including the closing of a sale/merger transaction to Fertitta or a third party) for the beneficial interest of a person or organization other than yourself (including such beneficial owners that you determined to have also held during the 2008 Transaction Subclass Period (September 17, 2008 through and including January 11, 2009)), you must either (i) send a copy of this Notice to the beneficial owner, postmarked no later than five (5) business days after you receive this Notice, or (ii) provide the names and addresses of such persons no later than five (5) business days after you receive this Notice to Landry's Restaurants, Inc., 1510 West Loop South, Houston, TX 77027, Attention: Mr. Steven L. Scheinthal. If you choose the second option, Landry's will send a copy of the Notice to the beneficial owner. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing Landry's with proper documentation supporting the expenses for which reimbursement is sought.
37. If you held Landry's common stock during the 2008 Transaction Subclass Period (September 17, 2008 through and including January 11, 2009) for the beneficial interest of a person or organization other than yourself (except for those beneficial owners that you determined to have also held during the 2009 Transaction Subclass Period which are covered by paragraph 36 above), you must either (i) send a copy of this Notice to the beneficial owner, postmarked no later than five (5) business days after you receive this Notice, or (ii) provide the names and addresses of such persons no later than five (5) business days after you receive this Notice to Landry's Shareholder Litigation, c/o The Garden City Group, Inc., P.O. Box \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_-\_\_\_\_\_. If you choose the second option, the Claims Administrator will send a copy of the Notice to the beneficial owner. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice and the Proof of Claim form can be obtained from the website maintained by the Claims Administrator, [www.\\_\\_\\_\\_\\_.com](http://www._____.com), or by calling toll-free 1-\_\_\_\_-\_\_\_\_\_.



**Must be Postmarked  
No Later Than**  
\_\_\_\_\_

**Landry's Shareholder Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43107-4249  
1-800-231-1815**



Claim Number:

Control Number:

## **PROOF OF CLAIM AND RELEASE**

**YOU MUST COMPLETE THIS CLAIM FORM BY \_\_\_\_\_ TO BE ELIGIBLE TO SHARE IN THE SETTLEMENT FUND  
CREATED FOR THE BENEFIT OF THE 2008 TRANSACTION SUBCLASS MEMBERS.**

<u>TABLE OF CONTENTS</u>	<u>PAGE #</u>
SECTION A - CLAIMANT INFORMATION .....	2
SECTION B - LANDRY'S COMMON STOCK .....	3
SECTION C - RELEASE AND SIGNATURE .....	4



**SECTION A - CLAIMANT INFORMATION**

**Claimant Name(s)** (as you would like the name(s) to appear on the check, if eligible for payment):

**Account Number:** (not required)

**Last 4 digits of Claimant Social Security Number/Taxpayer ID Number:**

**Name of the Person you would like the Claims Administrator to Contact Regarding This Claim** (if different from the Claimant Name(s) listed above):

**Claimant or Representative Contact Information:**

The Claims Administrator will use this information for all communications relevant to this Claim (including the check, if eligible for payment). If this information changes, you MUST notify the Claims Administrator in writing at the address above.

**Street Address:**



**City:**

**State and Zip Code:**

**Country (Other than U.S.):**

**Daytime Telephone Number:** (    )    -   

**Evening Telephone Number:** (    )    -   

**Email Address:**

*(Email address is not required, but if you provide it you authorize the Claims Administrator to use it in providing you with information relevant to this claim.)*

IF YOU FAIL TO SUBMIT A COMPLETE CLAIM BY \_\_\_\_\_ YOUR CLAIM IS SUBJECT TO REJECTION OR YOUR PAYMENT MAY BE DELAYED.

**NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. To obtain the mandatory electronic filing requirements and file layout, you may visit the website at [www.gardencitygroup.com](http://www.gardencitygroup.com) or you may e-mail the Claims Administrator at [eClaim@gardencitygroup.com](mailto:eClaim@gardencitygroup.com). Any file not in accordance with the required electronic filing format will be subject to rejection. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email after processing your file with your claim numbers and respective account information. Do not assume that your file has been received or processed until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the electronic filing department at [eClaim@gardencitygroup.com](mailto:eClaim@gardencitygroup.com) to inquire about your file and confirm it was received and acceptable.

**NOTE:** Separate Proofs of Claim should be submitted for each separate legal entity (for example, a claim from Joint Owners should not include separate transactions of just one of the Joint Owners, an Individual should not combine his or her IRA transactions with transactions made solely in the Individual's name). Conversely, a single Proof of Claim should be submitted on behalf of one legal entity including all transactions made by that entity no matter how many separate accounts that entity has (for example, a Corporation with multiple brokerage accounts should include all transactions made in Landry's common stock during the Class Period on one Proof of Claim, no matter how many accounts the transactions were made in.)



### **SECTION B - LANDRY'S COMMON STOCK**

YOU MUST SUBMIT DOCUMENTATION SUPPORTING THE INFORMATION BELOW

1. **BEGINNING HOLDINGS:** At the close of business on **September 16, 2008**, I owned  shares of Landry's common stock. (If none, write "zero" or "0." If other than zero, must be documented.)
2. **PURCHASES:** I made the following purchases of Landry's common stock on or after **September 17, 2008** (through the date you submit this claim form) (Must be documented)

Date(s) of Purchase (List Chronologically) (Month/Day/Year)	Number of Shares of Common Stock Purchased
/ /	
/ /	
/ /	
/ /	

3. **SALES:** I made the following sales of Landry's common stock on or after **September 17, 2008** (through the date you submit this claim form) (Must be documented)

Date(s) of Sale (List Chronologically) (Month/Day/Year)	Number of Shares of Common Stock Sold	Sale Price Per Share of Common Stock
/ /		\$ .
/ /		\$ .
/ /		\$ .
/ /		\$ .

4. **UNSOLD HOLDINGS:** As of the date I filed this claim form, I owned  shares of Landry's common stock. (If none, write "zero" or "0." If other than zero, must be documented.)

**IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST  
PHOTOCOPY THIS PAGE AND CHECK THIS BOX   
IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED**



**SECTION C - RELEASE AND SIGNATURE**

1. I affirm that I sold Landry's common stock on or after September 17, 2008. (Do not submit this Proof of Claim if you did not sell Landry's common stock on or after September 17, 2008).

2. By submitting this Proof of Claim, I state that I believe in good faith that:

- I am a member of the 2008 Transaction Subclass as defined in the Notice of Proposed Settlement of Shareholder Litigations, Settlement Fairness Hearing, and Applications for Attorney's Fees and Reimbursement of Litigation Expenses (the "Notice"); or
- I am acting for such person (Note: If you are acting in a representative capacity on behalf of a member of the 2008 Transaction Subclass. (e.g., as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)

I further state that I believe in good faith that:

- I am not a Defendant in the litigation that is the subject of this settlement or anyone excluded from the Net Settlement Fund; and
- I have read and understand the Notice and believe that I am entitled to receive a share of the Net Settlement Fund; and
- I elect to participate in the proposed settlement described in the Notice.

3. I consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim. I understand and agree that my claim may be subject to investigation and discovery under the Rules of the Court of Chancery of the State of Delaware, provided that such investigation and discovery shall be limited to my status as a member of the 2008 Transaction Subclass and the validity and amount of my claim. No discovery shall be allowed on the merits of the litigation or settlement in connection with processing of the Proofs of Claim.

4. Where requested above, I have set forth all relevant information regarding each of my sales and/or purchases of Landry's common stock during the Class Period. I agree to furnish additional information to the Claims Administrator, if requested to do so.

5. In support of my claim I have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each relevant purchase, sale or retention of Landry's common stock. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)

6. I understand that the information contained in this Proof of Claim is subject to such verification as required by the Claims Administrator or directed by the Court, and I agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most claims. The Claims Administrator may request additional information to efficiently and reliably calculate your Recognized Loss Amount. The Claims Administrator may condition acceptance of the Proof of Claim upon the production of additional information, including, where applicable, information concerning transactions in any derivatives of the subject securities, e.g. option contracts.)

7. I (we) understand and acknowledge that without further action by anyone, on and after the Effective Date, all 2008 Transaction Subclass Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall release, waive, discharge and dismiss any and all Settled Claims (as defined in the Notice), and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Claims, against all Released Parties (as defined in the Notice).

I declare under penalty of perjury under the laws of the State of Delaware that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, \_\_\_\_\_.

(Month/Year) (City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Joint owner sign your name here)

\_\_\_\_\_  
(Joint owner type or print your name here)

\_\_\_\_\_  
(Capacity of persons signing, e.g., Beneficial Purchaser, Executor or Administrator)

## REMINDER CHECKLIST

1. Please sign the Certification Section of the Proof of Claim Form and Release.
2. If this Claim is being made on behalf of Joint Claimants, then both must sign.
3. For an overview of what constitutes adequate supporting documentation please visit [www.gardencitygroup.com/pages/cases/filing-tips.php](http://www.gardencitygroup.com/pages/cases/filing-tips.php).
4. **DO NOT SEND ORIGINALS OF ANY SUPPORTING DOCUMENTS.**
5. Keep a copy of your Proof of Claim Form and Release and all documentation submitted for your records.
6. The Claims Administrator will acknowledge receipt of your Proof of Claim Form and Release by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgment postcard. If you do not receive an acknowledgment postcard within 60 days, please call the Claims Administrator toll free at **1-800-231-1815**.
7. If you move, please send us your new address to:

**Landry's Shareholder Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43107-4249**

8. **Do not use highlighter on the Proof of Claim Form and Release or supporting documentation.**

**THIS PROOF OF CLAIM MUST BE POSTMARKED NO LATER THAN  
\_\_\_\_\_, 2010 AND MUST BE MAILED TO:**

**Landry's Shareholder Litigation  
c/o The Garden City Group, Inc.  
PO Box 9349  
Dublin, OH 43107-4249**

IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE  
EMPLOYEES' RETIREMENT SYSTEM, on  
behalf of itself and all other similarly situated  
shareholders of Landry's Restaurants, Inc., and  
derivatively on behalf of nominal defendant  
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.  
SCHEINTHAL, KENNETH BRIMMER,  
MICHAEL S. CHADWICK, MICHAEL  
RICHMOND, JOE MAX TAYLOR, FERTITTA  
HOLDINGS, INC., FERTITTA ACQUISITION  
CO., RICHARD LIEM, FERTITTA GROUP,  
INC. and FERTITTA MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**SUMMARY NOTICE OF PROPOSED SETTLEMENTS OF SHAREHOLDER  
LITIGATION, SETTLEMENT FAIRNESS HEARING, AND APPLICATIONS FOR  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

TO: ALL PERSONS AND ENTITIES WHO HELD SHARES OF LANDRY'S  
RESTAURANTS, INC. ("LANDRY'S" OR THE "COMPANY") COMMON STOCK  
AT ANY POINT BETWEEN SEPTEMBER 17, 2008 AND JANUARY 11, 2009,  
INCLUSIVE (THE "2008 TRANSACTION SUBCLASS"); AND

ALL PERSONS AND ENTITIES WHO HELD SHARES OF LANDRY'S COMMON  
STOCK AT ANY POINT BETWEEN NOVEMBER 3, 2009 AND THE CLOSING OF  
A SALE/MERGER TRANSACTION OF LANDRY'S (THE "2009 TRANSACTION  
SUBCLASS", TOGETHER WITH 2008 TRANSACTION SUBCLASS, THE  
"CLASSES")

YOU ARE HEREBY NOTIFIED, pursuant to Delaware Court of Chancery Rules 23 and  
23.1 and an Order of the Court, that (i) the above-captioned action (the "Action") is pending as a  
class and derivative action in the Court of Chancery of the State of Delaware (the "Court"), and  
that the Court has preliminarily certified for settlement purposes the Classes defined above, each

of which exclude Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry's and the Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party; and (ii) settlements (the "Settlements") have been reached on behalf of the respective Classes dismissing the claims asserted or that could have been asserted against Defendants in the Second Amended Verified Class Action and Derivative Complaint filed in the Action on May 21, 2010, and every prior version of the Complaint (collectively, the "Complaint").

Pursuant to the Settlement reached on behalf 2008 Transaction Subclass, the Defendants or their successor(s)-in-interest have agreed to pay or caused to be paid a total of \$14,500,000 in cash into escrow (the "Settlement Fund") for the benefit of the members of the 2008 Transaction Subclass only. In consideration of the Settlement reached on behalf of the 2009 Transaction Subclass, the Defendants and the Special Committee of the Company's Board of Directors have agreed to implement certain deal terms with respect to the 2009 agreement of Tilman J. Fertitta ("Fertitta") and certain Fertitta entities to acquire Landry's for \$14.75 per share, including paying \$24.50 per share.

A hearing will be held before the Court, in the New Castle County, 500 North King Street, Wilmington, DE 19801, on \_\_\_\_\_, 2010 at \_\_\_:\_\_\_ .m., to, among other things, determine whether the proposed Settlements should be approved by the Court as fair, reasonable and adequate, to determine whether Plaintiff and Class Counsel have adequately represented the Classes, to determine whether the proposed Plan of Allocation for the Settlement Fund is fair and reasonable, and to consider the application of Class Counsel for awards of attorneys' fees and expenses.

IF YOU WERE A LANDRY'S SHAREHOLDER AT ANY POINT BETWEEN SEPTEMBER 17, 2008 AND JANUARY 11, 2009, INCLUSIVE AND/OR AT ANY POINT BETWEEN NOVEMBER 3, 2009 AND THE CLOSING OF A SALE/MERGER TRANSACTION OF LANDRY'S, YOUR RIGHTS WILL BE AFFECTED BY THE SETTLEMENTS OF THE ACTION. This is a summary notice only. Additional information about the claims asserted in the Action and the terms and benefits of the proposed Settlements are available in the full printed Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Expenses (the "Notice"). If you have not yet received the full printed Notice or the Proof of Claim form ("Claim Form"), you may obtain copies of these documents by contacting the Claims Administrator at:

LANDRY'S SHAREHOLDERS LITIGATION  
CLAIMS ADMINISTRATOR  
C/O \_\_\_\_\_

Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

If you are a member of the 2008 Transaction Subclass and/or a member of the 2009 Transaction Subclass, you will be bound by the Orders of the Court granting final approval to the respective Settlements. If you are a member of the 2008 Transaction Subclass, in order to be eligible to share in the distribution of the Settlement Fund, you must submit a Claim Form no later than \_\_\_\_\_, 2010. Any objections to the Settlements, the Plan of Allocation and/or Class Counsel's applications for awards of attorneys' fees and expenses must be filed by \_\_\_\_\_, 2010 in accordance with the procedures set forth in the Notice.

By Order of The Court

IN THE COURT OF THE CHANCERY OF THE STATE OF DELAWARE

LOUISIANA MUNICIPAL POLICE  
EMPLOYEES' RETIREMENT SYSTEM, on  
behalf of itself and all other similarly situated  
shareholders of Landry's Restaurants, Inc., and  
derivatively on behalf of nominal defendant  
Landry's Restaurants, Inc.,

Plaintiff,

v.

C.A. No. 4339-VCL

TILMAN J. FERTITTA, STEVEN L.  
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HOLDINGS, INC., FERTITTA ACQUISITION  
CO., RICHARD LIEM, FERTITTA GROUP,  
INC. and FERTITTA MERGER CO.

Defendants, and

LANDRY'S RESTAURANTS, INC.,

Nominal Defendant.

**ORDER AND FINAL JUDGMENT WITH RESPECT TO DISMISSAL AND  
SETTLEMENT OF COUNTS I, II, III AND IX OF THE COMPLAINT**

A hearing having been held before this Court on \_\_\_\_\_, 2010, pursuant to this Court's Order dated \_\_\_\_\_, 2010 (the "Scheduling Order"), upon a Stipulation and Agreement of Settlement of Remaining Claims dated July 23, 2010 (the "Stipulation"), filed in the above-captioned action (the "Action"), which (along with the defined terms therein) is incorporated herein by reference; it appearing that due notice of said hearing has been given in accordance with the aforesaid Scheduling Order; the respective Parties having appeared by their attorneys of record; the Court having heard and considered evidence in support of the proposed Settlement set forth in the Stipulation; the attorneys for the respective Parties having been heard; an opportunity to be heard having been given to all other persons requesting to be heard in accordance with the

Scheduling Order; the Court having determined that notice to the 2008 Transaction Subclass and was adequate and sufficient; and the entire matter of the proposed Settlement having been heard and considered by the Court;

**IT IS ORDERED, ADJUDGED AND DECREED THIS \_\_\_\_ DAY OF \_\_\_\_\_ 2010 AS FOLLOWS:**

1. The Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice") and the Summary Notice of Proposed Settlements of Shareholder Litigation, Settlement Fairness Hearing, and Applications for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Summary Notice") has been provided to the 2008 Transaction Subclass pursuant to and in the manner directed by the Scheduling Order; proof of mailing and publication of notice was filed with the Court; and full opportunity to be heard has been offered to all Parties and the 2008 Transaction Subclass. The form and manner of notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of due process, Delaware Court of Chancery Rule 23, and applicable law, and it is further determined that all members of the 2009 Transaction Subclass are bound by this Order.

2. For purposes of the Settlement, the Court finds that the Action is a proper class action pursuant to Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) and hereby finally certifies the 2008 Transaction Subclass as consisting of:

All persons and entities who held shares of Landry's common stock at any point between September 17, 2008 and January 11, 2009, inclusive. Excluded from the 2008 Transaction Subclass are: Defendants; members of the immediate families of each of the Individual Defendants; all directors, officers, parents, subsidiaries and affiliates of Landry's and the Fertitta Entities; any person, firm, trust, corporation or entity in which any Defendant has or had a controlling interest or

which is related to or affiliated with any of the Defendants; and the legal representatives, heirs, successors-in-interest or assigns of any such excluded party.

3. Based on the record in the Action, the 2008 Transaction Subclass satisfies the provisions of Delaware Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2). Specifically, this Court finds that (a) the 2008 Transaction Subclass is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the 2008 Transaction Subclass; (c) the claims of the Class Representative are typical of the claims of the 2008 Transaction Subclass; (d) the Class Representative and Class Counsel have and will fairly and adequately represent the interests of the 2008 Transaction Subclass; (e) the prosecution of separate actions by individual members of the 2008 Transaction Subclass would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants, and, as a practical matter, the disposition of Counts I, II, III and IX of the Complaint would influence the disposition of any pending or future identical cases brought by other members of the 2008 Transaction Subclass; and (f) Defendants have allegedly acted or refused to act on grounds generally applicable to the 2008 Transaction Subclass, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the 2008 Transaction Subclass as a whole.

4. For purposes of the Settlement, Plaintiff Louisiana Municipal Police Employees' Retirement System is finally appointed as Class Representative, and Plaintiff's Counsel, Bernstein Litowitz Berger & Grossmann LLP and Grant & Eisenhofer P.A., are finally appointed as Class Counsel pursuant to Delaware Court of Chancery Rule 23.

5. The Settlement is found to be fair, reasonable and adequate and in the best interests of Plaintiff and the 2008 Transaction Subclass. The Parties to the Stipulation are hereby

authorized and directed to comply with and to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

6. Counts I, II, III and IX of the Complaint are hereby dismissed with prejudice as against the Defendants.

7. As provided in the Stipulation, “Settled Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or un-accrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, whether class, individual or derivative in nature, including both known claims and Unknown Claims, (i) that have been asserted in any count of the Complaint or (ii) that could have been asserted in any forum by Plaintiff (on behalf of itself and/or Landry’s) or any 2008 Transaction Subclass Member which (even in part) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to any count of the Complaint and which (even in part) arise out of Plaintiff’s or the 2008 Transaction Subclass Members’ status as stockholders, buyers, or sellers of Landry’s common stock at any point between September 17, 2008 and January 11, 2009, inclusive (except for claims to enforce the Settlement).

8. As provided in the Stipulation, “Released Parties” means any and all of the Defendants, their past or present subsidiaries, parents, successors and predecessors, officers, directors, agents, employees, counsel, insurers, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which

is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of the Defendants.

9. As provided in the Stipulation, “Settled Defendants’ Claims” means any and all claims, debts, demands, rights or causes of action or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or un-liquidated, at law or in equity, matured or un-matured, including both known claims and Unknown Claims, that have been or could have been asserted in any forum by the Defendants or any of them or the successors and assigns of any of them against Plaintiff or any of the 2008 Transaction Subclass Members or their attorneys, which (even in part) arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions giving rise to any count of the Complaint and which (even in part) arise out of 2008 Transaction Subclass Members’ status as stockholders, buyers, or sellers of Landry’s common stock at any point between September 17, 2008 and January 11, 2009, or which arise out of or relate in any way to the institution, prosecution, or settlement of the Action (except for claims to enforce the Settlement).

10. As provided in the Stipulation, “Unknown Claims” means any Settled Claims that Plaintiff or any of the other 2008 Transaction Subclass Member does not know or suspect exists in his, her or its favor at the time of the release of the Settled Claims as against the Released Parties, and any Settled Defendants’ Claims that any Defendant does not know or suspect to exist in his, her or its favor at the time of the release of the Settled Defendants’ Claims as against Plaintiff, the other 2008 Transaction Subclass Members and their counsel, including without

limitation those claims which, if known, might have affected the decision to enter into, or not object to, this Settlement. With respect to the Settled Claims and the Settled Defendants' Claims, the Parties stipulate and agree that Plaintiff and Defendants shall expressly waive, and each of the other 2008 Transaction Subclass Members shall be deemed to have waived and by operation of the Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by or under Cal. Civ. Code § 1542 or any other law of the United States or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to Cal. Civ. Code § 1542, which provides:

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.

Plaintiff and Defendants acknowledge, and the other 2008 Transaction Subclass Members by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Settled Claims and Settled Defendants' Claims was separately bargained for and was a key element of the Settlement.

11. Plaintiff and the 2008 Transaction Subclass Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns, shall release, waive, discharge and dismiss any and all Settled Claims, and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Claims, against all Released Parties.

12. Defendants on behalf of themselves and the other Released Parties, shall release, waive, discharge and dismiss any and all Settled Defendants' Claims, and shall forever be barred and enjoined from instituting, commencing or prosecuting any and all Settled Defendants' Claims, against Plaintiff, the 2008 Transaction Subclass Members and their counsel.

13. Neither this Stipulation, the Settlement, this Order and Final Judgment, nor any of their terms and provisions, nor any of the negotiations, discussions or proceedings in connection therewith, shall be deemed or constitute a presumption, concession or an admission by any Party of any fault, liability or wrongdoing by any of them, and shall not be interpreted, construed, deemed, involved, offered or received in evidence or otherwise used by any person in the Action or in any other action or proceeding, whether civil, criminal or administrative, except in connection with any proceeding to enforce the terms of the Stipulation.

14. A separate order shall be entered regarding Plaintiff's Counsel's application for attorneys' fees and expenses as allowed by the Court. Such order shall not disturb or affect any of the terms of this Order and Final Judgment.

15. The Court hereby finds that the proposed Plan of Allocation of the Net Settlement Fund, as set forth in the Notice, is in all respects, fair and reasonable, and the Court hereby approves the Plan of Allocation. The Court hereby finds that the formula for the calculation of the claims of Claimants that is set forth in the Notice provides a fair and reasonable basis upon which to allocate among 2008 Transaction Subclass Members the proceeds of the Settlement Fund established by the Stipulation, with due consideration having been given to administrative convenience and necessity. The parties to the Stipulation are hereby directed to consummate and perform the terms of the Plan of Allocation.

16. Without affecting the finality of this Order and Final Judgment, jurisdiction is hereby retained by this Court for the purpose of protecting and implementing the Stipulation and the terms of this Order and Final Judgment, including the resolution of any disputes that may arise with respect to the effectuation of any of the provisions of the Stipulation; the allowance, disallowance or adjustment of any Class Member's claim on equitable grounds and any award or

distribution of the Settlement Fund; the disposition of the Settlement Fund; hearing and determining Plaintiff's Counsel's application for attorneys' fees and expenses; and for the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement and this Order and Final Judgment.

17. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Register in Chancery is expressly directed pursuant to Delaware Court of Chancery Rule 54(b).

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Vice Chancellor

**EXHIBIT F**

July 23, 2010

***Via Overnight Mail***

Mr. David D. Sterling  
Mr. Danny David  
Baker Botts L.L.P.  
One Shell Plaza  
910 Louisiana St.  
Houston, TX 77002

Mr. Gerry Pecht  
Fulbright & Jaworski L.L.P.  
1301 McKinney, Suite 5100  
Houston, TX 77010

Mr. Odean L. Volker  
Haynes and Boone, LLP  
One Houston Center  
1221 McKinney, Suite 2100  
Houston, TX 77010

Re: Cause No. 2009-71883 (Consolidated); *Fredric Goldfein, Individually and On Behalf of All Others Similarly Situated v. Landry's Restaurants, Inc., Tilman J. Fertitta, Steven L. Scheinthal, Kenneth W. Brimmer, Michael S. Chadwick, Joe Max Taylor, and Richard H. Liem*; In the 164th Judicial District of Harris County, Texas

Dear Counsel:

As you know, this firm has been designated as interim counsel to act on behalf of the putative class in the above-captioned consolidated action (the "Texas Action").

We have reviewed the Stipulation of Partial Settlement dated June 22, 2010 (the "Settlement") filed in *Louisiana Mun. Police Employees' Ret. Sys. v. Fertitta, et al.*, C.A. No. 4339-VCL (Del. Ch.) (the "Delaware Litigation"). This letter will confirm our understanding that all claims asserted or that could have been asserted in the Texas Action will have been settled, released and dismissed with prejudice upon final approval by the Court of Chancery of the Settlement in the Delaware Litigation. We agree not to object to the Settlement.

We also understand that the Texas Action has been dismissed and agree not to pursue any further action with respect to the Texas Action and/or the claims that have been settled in the Delaware Litigation.

Very truly yours,

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Robbins Geller Rudman & Dowd LLP (f/k/a  
Coughlin Stoia Geller Rudman & Robbins  
LLP)

ACCEPTED AND AGREED:

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Attorney for Tilman J. Fertitta, Steven L. Scheinthal, and  
Richard H. Liem

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Attorney for Kenneth W. Brimmer, Michael S. Chadwick,  
and Joe Max Taylor

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Attorney for Landry's Restaurants, Inc.