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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

Sergio Flores, individually and on behalf of all  
others individually situated,

Plaintiff

vs.

Aqua Terra Culinary, Inc. dba Samson Café,  
Point Pinos Grill, a California Corporation;  
Dory Ford, an individual,

Defendants.

Case No. 17CV002672

**CLASS ACTION**

**JOINT STIPULATION OF SETTLEMENT  
AND RELEASE OF CLASS ACTION**

1 Brian Mathias (SBN 282494)  
2 LAW OFFICES OF BRIAN MATHIAS  
3 P.O. Box 2874  
4 Aptos, California 95001  
5 Telephone: (831) 531-7141

6 Jonathan Melmed (SBN 290218)  
7 MELMED LAW GROUP P.C.  
8 1180 S. Beverly Drive, Suite 610  
9 Los Angeles, California 90035  
10 Telephone: (310) 824-3828  
11 Facsimile: (310) 862-6852

12 *Attorneys for Plaintiff, Sergio Flores*

13 Andrea Upton, Esq.  
14 HUDSON, MARTIN, FERRANTE, WITTEN & DE MARIA  
15 490 Calle Principal  
16 Monterey, California 93940  
17 Telephone: (831) 375-3151  
18 Facsimile: (831) 375-0131

19 *Attorney for Defendant, Aqua Terra Culinary, Inc.*

1 This Joint Stipulation of Settlement and Release of Class Action (“Stipulation”) is made and  
2 entered into by Plaintiff Sergio Flores, individually and as a representative of the Settlement Class, as  
3 defined below, and Aqua Terra Culinary, Inc. (“Defendant”) (collectively “the Parties”). This Stipulation  
4 is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e),  
5 and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide  
6 basis subject to the following terms and conditions. As detailed below, in the event the Court does not  
7 enter an order granting final approval of the Class Settlement, as defined below, or the conditions  
8 precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

9 **I. DEFINITIONS**

10 As used in this Stipulation, the following terms shall have the meanings specified below. To the  
11 extent terms or phrases used in this Stipulation are not specifically defined below, but are defined  
12 elsewhere in this Stipulation, they are incorporated by reference into this definition section.

13 **1. Action.** “Action” shall mean the following civil action: *Sergio Flores v. Aqua Terra*  
14 *Culinary, Inc.* filed on July 21, 2017, in the Monterey County Superior Court under Case No.  
15 17CV002672.

16 **2. Administrative Expenses.** “Administrative Expenses” shall include all costs and  
17 expenses associated with and paid to the Settlement Administrator, which are anticipated not to exceed  
18 \$8,500.00.

19 **3. Claims.** “Claims” shall mean the claims asserted in the Complaint, and causes of action  
20 based on Defendant’s alleged: (1) willful misclassification of employees; (2) failure to pay overtime  
21 wages; (3) failure to provide rest breaks and rest break premiums; (4) failure to provide meal periods and  
22 pay missed meal period premiums; (5) failure to provide complete wage statements; (6) waiting time  
23 penalties; (7) unfair business practices based on the foregoing; and (8) PAGA and other penalties based  
24 on the foregoing.

25 **4. Settlement Class.** “Settlement Class” shall mean all current and former individuals who  
26 are or have been classified as independent contractors by Defendant in California, and who worked for  
27 Defendant for more than thirty days at any time from March 1, 2013 through date of preliminary approval.  
28 The Class consists of approximately 28 members.

1           **5.        Class Counsel.** “Class Counsel” shall mean Brian Mathias of Law Offices of Brian  
2 Mathias, and Jonathan Melmed of Melmed Law Group P.C.

3           **6.        Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean  
4 Class Counsel’s attorney fees and expenses as set forth in Section IV, Paragraph 6.

5           **7.        Settlement Class Member.** Settlement Class Member” shall mean any person who is a  
6 member of the Settlement Class, or, if such person is incompetent or deceased, the person's legal guardian,  
7 executor, heir or successor-in-interest.

8           **8.        Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action Settlement  
9 and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise  
10 approved by the Court, which is to be mailed to Class Members along with the Share Form.

11           **9.        Share Form.** “Share Form” shall mean the Share Form, as set forth in the form of **Exhibit**  
12 **2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class Members along  
13 with the Class Notice.

14           **10.       Class Participants.** “Class Participants” shall mean any and all Class Members who do  
15 not timely Opt-Out of the Class Settlement.

16           **11.       Class Period.** “Class Period” shall mean the period from March 1, 2013 through date of  
17 preliminary approval.

18           **12.       Class Representative.** “Class Representative” shall mean Plaintiff Sergio Flores.

19           **13.       Class Settlement.** “Class Settlement” shall mean the settlement embodied in this  
20 Stipulation, which is subject to Court approval.

21           **14.       Complaint.** “Complaint” shall mean the operative Class Action Complaint filed in the  
22 Action by Plaintiff, in the Superior Court of Monterey County on July 21, 2017.

23           **15.       Court.** “Court” shall mean the Superior Court of Monterey County.

24           **16.       Defense Counsel.** “Defense Counsel” shall mean Andrea Upton, Esq., of Hudson,  
25 Martin, Ferrante, Witten & DeMaria, 490 Calle Principal, Monterey, CA 93940.

26           **17.       Effective Date.** “Effective Date” shall be the date when all of the following events have  
27 occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense Counsel;  
28 (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the Settlement

1 Class Members providing them with an opportunity to Opt-Out of the Class Settlement; (d) the Court has  
2 held a Final Approval and Fairness Hearing and entered a final order and judgment certifying the Class  
3 and approving this Stipulation; and (e) the later of the following events: the expiration of the period for  
4 filing any appeal, writ, or other appellate proceeding opposing the Class Settlement has elapsed without  
5 any appeal, writ or other appellate proceeding having been filed; or the dismissal of any appeal, writ, or  
6 other appellate proceeding opposing the Class Settlement with no right to pursue further remedies or relief;  
7 or any appeal, writ, or the issuance of such other final appellate order upholding the Court's final order  
8 with no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that the  
9 Class Settlement shall not become effective until the Court's order approving the Class Settlement is  
10 completely final and there is no further recourse by an appellant or objector who seeks to contest the Class  
11 Settlement. In the event no objections are filed, the Effective Date shall be after steps (a) through (d) are  
12 completed.

13 **18. Employee's Taxes and Required Withholding.** "Employee's Taxes and Required  
14 Withholding" shall mean the employee's share of any and all applicable federal, state or local payroll  
15 taxes, including those collected under authority of the Federal Insurance Contributions Act ("FICA"),  
16 FUTA and/or SUTA on the portion of any Class Participant's Individual Settlement Amount that  
17 constitutes wages as set forth in section IV, paragraph 4. The Employee's Taxes and Requirement  
18 Withholdings will be withheld from and paid out of the Net Settlement Amount.

19 **19. Employer's Taxes.** "Employer's Taxes" shall mean and refer to Defendant's share of  
20 corporate federal, state and/or local payroll taxes that is owed on the portion of any Class Participant's  
21 Individual Settlement Amount that constitutes wages as set forth in section IV, paragraph 4. The  
22 Employer's Taxes shall be separately paid by Defendant and shall not be paid from the Gross Settlement  
23 Amount or Net Settlement Amount.

24 **20. Final Approval and Fairness Hearing.** "Final Approval and Fairness Hearing" shall  
25 mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class Settlement.

26 **21. Defendants.** "Defendants" shall collectively mean Aqua Terra Culinary, Inc., Samson  
27 Café, Point Pinos Grill, Dory Ford and all of their affiliated entities, and all of their shareholders, owners,  
28 officers, directors, agents, managing agents, employees, insurers, and attorneys.

1           **22.     Hearing on Preliminary Approval.** “Hearing on Preliminary Approval” shall mean the  
2 hearing held on the motion for preliminary approval of the Class Settlement.

3           **23.     Individual Settlement Amount.** “Individual Settlement Amount” shall mean the amount  
4 which is ultimately distributed to each Class Participant, net of any Employee’s Taxes and Required  
5 Withholdings.

6           **24.     Plaintiff.** “Plaintiff” shall mean the named Plaintiff Sergio Flores.

7           **25.     Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement  
8 Amount minus all deductions.

9           **26.     Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly request  
10 exclusion from the Class in accordance with the terms of the Class Notice.

11          **27.     Parties.** “Parties” shall mean Plaintiff and Defendant.

12          **28.     Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon  
13 which the Court enters an order preliminarily approving this Stipulation.

14          **29.     Released Claims.** “Released Claims” shall mean all claims in the operative Class Action  
15 Complaint (“Complaint”), including claims for misclassification, unpaid overtime wages, rest break  
16 violations, meal break violations, wage statement penalties, waiting time penalties, PAGA penalties, and  
17 Unfair Competition Law claims pursuant to California Labor Code sections 201-203, 226.8, 226.7, 510,  
18 512, 1194, 1194.2, 2698 – 2699, IWC Wage Order No. 5, sections 11 and 12, and claims under sections  
19 17200-17204 of the California Business and Professions Code based on the foregoing.

20           It is understood and agreed that this Stipulation will not release any person, party or entity from  
21 claims, if any, by Class Members for workers compensation, unemployment, or disability benefits of any  
22 nature, nor does it release any claims, actions, or causes of action which may be possessed by Settlement  
23 Class Members under state or federal discrimination statutes, including, without limitation, the Cal. Fair  
24 Employment and Housing Act, the Cal. Government Code § 12940, *et seq.*; the Unruh Civil Rights Act,  
25 the Cal. Civil Code §51, *et seq.*; the California Constitution; Title VII of the Civil Rights Act of 1964, 42  
26 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101, *et seq.*; the  
27 Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.*; and all of their  
28 implementing regulations and interpretive guidelines.

1           **30.     Released Parties.** “Released Parties” shall mean Aqua Terra Culinary, Inc., Samson  
2 Café, Point Pinos Grill, Dory Ford and all of their affiliated entities, and all of their shareholders, owners,  
3 officers, directors, agents, managing agents, employees, insurers, and attorneys.

4           **31.     Response Deadline.** “Response Deadline” shall mean the date thirty (30) days following  
5 the date on which the Settlement Administrator first mails Class Notice to the Settlement Class Members.

6           **32.     Incentive Award.** “Incentive Award” shall mean any additional monetary payment  
7 provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this  
8 Action.

9           **33.     Settlement.** “Settlement” shall mean the settlement between the Parties, which is  
10 memorialized in this Stipulation and subject to approval by the Court.

11           **34.     Settlement Administrator.** “Settlement Administrator” shall mean CPT Group, Inc.,  
12 which the Parties have agreed will be responsible for administration of the Settlement and related matters.

13           **35.     Gross Settlement Amount.** “Gross Settlement Amount” is the agreed upon non-  
14 reversionary settlement amount totaling \$140,000.00 to be paid by Defendant in full settlement of the  
15 Released Claims asserted in this case, including the Administrative Expenses, Employee’s Taxes and  
16 Required Withholdings, Class Attorney Fees and Expenses, the Incentive Award, and payments for PAGA  
17 Penalties, which shall be paid pursuant to the Payment Plan as defined below. Defendant shall separately  
18 pay its share of the Employer’s Taxes in addition to the Gross Settlement Amount.

19           **36.     Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of  
20 Class Action, including any attached exhibits.

21           **37.     Final Payment Date.** “The Final Payment Date” shall be the date which Defendant  
22 makes its sixth and final payment, pursuant to the “Payment Plan.”

23           **38.     Payment Plan.** The “Payment Plan” shall be Defendant’s series of six payments to the  
24 Settlement Administrator encompassing the Gross Settlement Amount, as follows: \$23,333.33 within 30  
25 days of the court’s granting Final Approval of the Settlement, \$23,333.33 within 180 days of the first  
26 payment, \$23,333.33 with 180 days of the second payment, \$23,333.33 within 180 days of the third  
27 payment, \$23,333.33 within 180 days of the fourth payment, and \$23,333.33 within 180 days of the fifth  
28 payment.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

2 **1. Plaintiff's Claims.** On behalf of the Settlement Class, Plaintiff alleged the following  
3 causes of action: (1) willful misclassification of employees (Cal. Labor Code 226.8 and 2698, *et seq.*); (2)  
4 failure to pay overtime wages (Cal. Labor Code §§ 510(a), 1194); (3) failure to provide paid periods and  
5 pay missed rest break premiums (Cal. Labor Code §§ 226.7; IWC Wage Order No. 5); (4) failure to  
6 provide meal periods and pay missed meal period premiums (Cal. Labor Code §§ 226.7, 512, IWC Wage  
7 Order No. 5); (5) failure to provide wage statements (Labor Code § 226 (a)); (6) waiting time penalties  
8 (Cal. Labor Code § 201 – 203); (7) derivative UCL violations (Cal. Bus. & Prof. Code §§ 17200-17204)  
9 based on the foregoing; and (8) PAGA and other penalties (Labor Code §§ 2698 – 2699.5) based on the  
10 foregoing.

11 **2. Discovery, Investigation, Motion Practice and Research.** Class Counsel has conducted  
12 significant discovery during the prosecution of the Action. This discovery, investigation, and prosecution  
13 has included, among other things, (a) multiple telephonic conferences with Plaintiff; (b) inspection and  
14 analysis of documents and other information produced by Plaintiff and Defendant; (c) analysis of the legal  
15 positions taken by Defendant; (d) investigation into the viability of class treatment of the claims asserted  
16 in the Action; (e) analysis of potential class-wide damages, including information sufficient to understand  
17 Defendant's potential defense to the unpaid rest break and overtime claims under Labor Code § 226.2; (f)  
18 research of the applicable law with respect to the claims asserted in the Complaint and the potential  
19 defenses thereto; (g) assembling and analyzing of data for calculating damages. In addition, the Parties  
20 have determined that the estimated size of the Class is approximately 29 individuals.

21 The Class Representative has vigorously prosecuted this case, and Defendant has vigorously  
22 contested it. The Parties have engaged in sufficient investigation and discovery to assess the relative  
23 merits of the claims of the Class Representative and of Defendant's defenses to them.

24 **3. Allegations of the Class Representative and Benefits of Class Settlement.** The  
25 extensive discovery conducted in this matter, as well as discussions between counsel, have been adequate  
26 to give the Class Representative and Class Counsel a sound understanding of the merits of their positions  
27 and to evaluate the worth of the claims of the Settlement Class. The discovery conducted in this Action  
28 and the information exchanged by the Parties through discovery and settlement discussions are sufficient



1 to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair and  
2 equitable basis.

3 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions  
4 asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and acknowledge the  
5 expense and delay of continued lengthy proceedings necessary to prosecute the Action against Defendant  
6 through trial and through appeals. Class Counsel has taken into account the uncertain outcome of the  
7 litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and  
8 delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as  
9 well as trying the claims of the class. Class Counsel is mindful of the potential problems of proof under,  
10 and possible defenses to, the claims alleged in the Action.

11 Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits  
12 upon Plaintiff and the Settlement Class Members and that an independent review of this Stipulation by  
13 the Court in the approval process will confirm this conclusion. Based on their own independent  
14 investigation and evaluation, Class Counsel has determined that the Settlement set forth in the Stipulation  
15 is in the best interests of Plaintiff and the Settlement Class Members.

16 **4. Defendant's Denials of Wrongdoing and Liability.** Defendant has denied and continues  
17 to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the Action.  
18 Defendant has expressly denied and continues to deny all charges of wrongdoing or liability against it  
19 arising out of any of the conduct, statements, acts or omissions alleged in the Action. Defendant contends  
20 that it complied in good faith with California and federal wage and hour laws and has dealt legally and  
21 fairly with Plaintiff and Settlement Class Members. Defendant further denies that, for any purpose other  
22 than settling this Action, these claims are appropriate for class or representative treatment. Nonetheless,  
23 Defendant has concluded that further proceedings in the Action would be protracted and expensive and  
24 that it is desirable that the Action be fully and finally settled in the manner and upon the terms and  
25 conditions set forth in this Stipulation in order to dispose of burdensome and protracted litigation, to permit  
26 the operation of Defendant's business without further expensive litigation and the distraction and diversion  
27 of its personnel with respect to matters at issue in the Action. Defendant has also taken into account the  
28 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. Defendant

1 has, therefore, determined that it is desirable and beneficial to it that the Action be settled in the manner  
2 and upon the terms and conditions set forth in this Stipulation.

3 **5. Intent of the Class Settlement.** The Class Settlement set forth herein intends to achieve  
4 the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of the Action;  
5 (3) discharge of Released Party from liability for any and all of the Released Claims; and (4) discharge of  
6 Plaintiff from liability for any and all claims arising out of the Action.

7 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**  
8 **COUNSEL**

9 **1. The Settlement Class.** For the purposes of this Stipulation and the Class Settlement of  
10 this Action only, the Parties stipulate to conditional class certification of the Settlement Class. Defendant's  
11 counsel believes this conditional certification is appropriate because the Released Claims are being  
12 compromised without need to establish the elements of those claims on which liability turns.

13 **2. Appointment of Class Counsel.** For purposes of this Stipulation and subject to the  
14 Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the Class  
15 and the effectuation of the Class Settlement pursuant to this Stipulation.

16 **IV. CLASS SETTLEMENT CONSIDERATION**

17 **1. Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement  
18 Amount of \$140,000.00. There shall be no reversion to Defendant. The Gross Settlement Amount and  
19 other actions and forbearances taken by Defendant shall constitute adequate consideration for the Class  
20 Settlement and will be made in full and final settlement of: (a) the Released Claims, (b) Class Attorney  
21 Fees and Expenses, (c) the Administrative Expenses, (d) the Incentive Award, (e) PAGA payments, and  
22 (f) any other obligation of Defendant under this Stipulation (other than the Employer's Taxes and Required  
23 Withholding on the portion of the Net Settlement Amount allocated to the payment of wages). The Gross  
24 Settlement Amount shall be paid to the Settlement Administrator pursuant to a "Payment Plan" where  
25 Defendant shall pay to the Settlement Administrator a series of six payments, as follows: \$23,333.33  
26 within 30 days of the court's granting Final Approval of the Settlement, \$23,333.33 within 180 days of  
27 the first payment, \$23,333.33 with 180 days of the second payment, \$23,333.33 within 180 days of the  
28 third payment, \$23,333.33 within 180 days of the fourth payment, and \$23,333.33 within 180 days of the

1 fifth payment. After the Court issues an order preliminarily approving this Class Settlement, the  
2 Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall  
3 describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class  
4 Settlement as well as the Share Form, which shall identify the Settlement Class Member, the pay periods  
5 worked by each Settlement Class Member, as well as the estimated amount of the Individual Settlement  
6 Amount the Settlement Class Member can expect to receive once the Class Settlement becomes Effective.  
7 Settlement Class Members shall be given the opportunity to challenge their pay periods worked  
8 information. As described in Section V below, within 30 days after Final Approval, Defendant shall be  
9 obligated to deposit with the Settlement Administrator the first “payment installment” of \$23,333.33 and  
10 thereafter to proceed to make the remaining payments pursuant to the “Payment Plan.”

11 **2. Incentive Award for Plaintiff.** Plaintiff may petition the Court to approve an Incentive  
12 Award in an amount up to \$3,500 for Plaintiff’s efforts on behalf of the Settlement Class in this Action,  
13 including assisting in the investigation and consulting with Class Counsel and providing crucial  
14 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award  
15 in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross  
16 Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as a  
17 Settlement Class Member. The Incentive Award shall not be considered wages, and the Settlement  
18 Administrator shall issue Plaintiff a IRS Form 1099 reflecting such payment. Plaintiff shall be responsible  
19 for the payment of any and all taxes with respect to his Incentive Award and shall hold Defendant harmless  
20 from any and all liability with regard thereto.

21 **3. Payment to Class Participants.** Each Class Participant shall be eligible to receive  
22 payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on  
23 the pro rata number of weeks worked by the Settlement Class Members during the Class Period as a  
24 proportion of all weeks worked by all Settlement Class Members. The Individual Settlement Amount for  
25 each Settlement Class Member shall be calculated in accordance with section VII, paragraph 2. Each  
26 Class Participant, including Plaintiff, shall be responsible for the payment of the Employee’s Taxes and  
27 Required Withholding with respect to his or her Individual Settlement Amount and shall hold Defendant  
28 harmless from any and all liability with regard thereto.

1           **4.       Tax Treatment and Payment.** For the purpose of calculating Employee's Taxes and  
2 Required Withholding for the Individual Settlement Amounts for Class Participants (including any  
3 payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 1/3 of  
4 each Individual Settlement Amount shall constitute wages in the form of back pay (and each Class  
5 Participant will be issued an IRS Form W-2 for such payment to him or her), and 1/3 of each Individual  
6 Settlement Amount shall constitute interest, and 1/3 of each Individual Settlement Amount shall constitute  
7 penalties (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her).  
8 Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes and  
9 Required Withholding due as a result of the wage portion of Class Participants' anticipated Individual  
10 Settlement Amounts and such actual amount will be deducted from the Net Settlement Amount.  
11 Additionally, prior to the funding of the Class Settlement and final distribution, the Settlement  
12 Administrator shall calculate the total Employer's Taxes due on the wage portion of the Class Participants'  
13 Individual Settlement Amounts and issue instructions to Defendant to separately fund these tax  
14 obligations/withholdings. The Parties understand that Plaintiff and the Class Participants who receive any  
15 payment pursuant to this Stipulation shall be solely responsible for any and all other individual tax  
16 obligations associated with this Class Settlement.

17           **5.       No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts  
18 paid under the Class Settlement will modify any previously credited hours, days, or weeks of service under  
19 any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will not  
20 form the basis for additional contributions to, benefits under, or any other monetary entitlement under  
21 Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the terms of  
22 this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary,  
23 earnings, wages, or any other form of compensation for the purposes of any of Defendant's benefit plan,  
24 policy or bonus program. Defendant retains the right to modify the language of its benefits plans, policies  
25 and bonus programs to effect this intent and to make clear that any amounts paid pursuant to this  
26 Stipulation are not for "weeks worked," "weeks paid," "weeks of service," or any similar measuring term  
27 as defined by applicable plans, policies and bonus programs for purpose of eligibility, vesting, benefit  
28 accrual, or any other purpose, and that additional contributions or benefits are not required by this

1 Stipulation. Defendant does not consider the Class Settlement payments “compensation” for purposes of  
2 determining eligibility for, or benefit accrual within, any benefit plans, policies, or bonus programs, or  
3 any other plan sponsored by Defendant.

4 **6. Class Attorney Fees and Expenses.** As part of the motion for final approval of the Class  
5 Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and Expenses  
6 with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*, \$46,666.66) and the  
7 award of costs and expenses of up to an additional \$8,000.00. Defendant agrees not to object to any such  
8 fee, cost or expense application in those amounts. As a condition of this Class Settlement, Class Counsel  
9 has agreed to pursue fees only in the manner reflected by this Section. Any Class Attorney Fees and  
10 Expenses awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net  
11 Settlement Amount and shall not constitute payment to any Settlement Class Members. If Class Counsel  
12 voluntarily reduces the request for Class Attorney Fees or Expenses or the Court’s award of Class Attorney  
13 Fees or Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect  
14 the actual Class Attorney Fees and Expenses awarded.

15 The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work  
16 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to represent  
17 the Settlement Class through the date of this Stipulation; (b) all work to be performed and costs to be  
18 incurred in connection with approval by the Court of the Class Settlement; (c) all work to be performed  
19 and costs and expenses, if any, incurred in connection with administering the Class Settlement through  
20 dismissal of the Action, with prejudice; and (d) may be based on the Catalyst Theory and/or Common  
21 Fund Doctrine.

22 **V. CLAIMS ADMINISTRATION COSTS AND EXPENSES**

23 **1. The Settlement Administrator’s Costs and Expenses.** All costs and expenses due the  
24 Settlement Administrator in connection with its administration of the Class Settlement, including, but not  
25 limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out requests  
26 and objections, and calculating, administering and distributing Individual Settlement Amounts to the Class  
27 Participants and related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed  
28 \$8,500.00.

1           **2.       Payment by Defendant.** The Settlement Administrator will calculate the Employer's  
2 Taxes and inform Defendant of the total amount of such Employer's Taxes within five days after the  
3 Effective Date. Defendant shall pay the Gross Settlement Amount to the Settlement Administrator  
4 pursuant to the Payment Plan.

5       **VI.       NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

6           **1.       The Settlement Administrator.** The Settlement Administrator will be responsible for  
7 mailing the Class Notice to Settlement Class Members, handling inquiries from Settlement Class Members  
8 concerning the Class Notice, determination of Individual Settlement Amounts, maintaining the settlement  
9 funds in an appropriate interest bearing account, preparing, administering and distributing Individual  
10 Settlement Amounts to Class Participants, issuing a final report and performing such other duties as the  
11 Parties may direct.

12           On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and Defense  
13 Counsel summary information updating them as to the number of validated and timely Objections and  
14 Opt-Out Requests. The Settlement Administrator will serve on Class Counsel and Defense Counsel via  
15 e-mail date-stamped copies of the original Opt-Outs and Objections no later than seven days after their  
16 receipt. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class  
17 Notice, without listing individual Class Member names which the Settlement Administrator will file with  
18 the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness  
19 Hearing. No later than seven days prior to the Final Approval and Fairness Hearing, the Settlement  
20 Administrator will compile and deliver to Class Counsel and Defense Counsel a report with summary  
21 information regarding (a) the total amount of final Individual Settlement Amounts of each Class  
22 Participant (b) the number of Class Participants to receive such payments, and (c) the final number of Opt-  
23 Outs and Objections.

24           Administrative Expenses are not anticipated to exceed \$8,500.00. Prior to the calculation and  
25 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total  
26 Administrative Expenses through the conclusion of their services and such actual amount will be deducted  
27 from the Gross Settlement Amount prior to the final calculation of the Individual Settlement Amounts.

1           **2.       Notice to Settlement Class Members.** Notice shall be provided to Settlement Class  
2 Members in the following manner: Within 14 days after entry by the Court of its Order of Preliminary  
3 Approval, Defendant shall provide the Settlement Administrator with an updated list of Class Members  
4 containing names, social security numbers, dates of employment, last-known addresses and phone  
5 numbers (the “Database”). The Database shall be marked “Confidential –Settlement Administrator’s Eyes  
6 Only.” Class Counsel shall not receive a copy of this list.

7           Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall  
8 determine the number of pay periods for each Settlement Class Member, populate the Class for each  
9 accordingly, send each Settlement Class Member the Class Notice via first-class, United States mail. The  
10 Class Notice shall also contain an easily understood statement alerting the Class Members that, unless  
11 they elect to opt-out of the Class Settlement, the Settlement Class Member is releasing and waiving all  
12 Released Claims against the Released Parties.

13           The Class Notice or Share Form will inform Settlement Class Members of his/her estimated share  
14 of the settlement and the number of pay periods he/she worked during the Class Period. Class Members  
15 may dispute their weeks worked if they believe they worked more weeks in the Class Period than  
16 Defendant’s records show by submitting information to the Settlement Administrator no later than 30 days  
17 after being mailed the Class Notice and Explanation Form by the Settlement Administrator, which is the  
18 defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and Defendant  
19 to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the pay periods to be  
20 credited, the Settlement Administrator shall make the final decision based on the information presented  
21 by the Settlement Class Member and Defendant.

22           **3.       Opt-Out Procedure.** Settlement Class Members who do not timely Opt-Out of the Class  
23 Settlement will be deemed to participate in the Class Settlement and shall become a Class Participant  
24 without having to submit a claim form or take any other action. In order to Opt-Out of the Class  
25 Settlement, the Settlement Class Member must submit letter or postcard to the Settlement Administrator  
26 by the Response Deadline. The Opt-Out request must state the Settlement Class Member’s name, address,  
27 telephone number, and signature. The Opt-Out request should state to the effect of: “I WISH TO BE  
28 EXCLUDED FROM THE SETTLEMENT CLASS IN THE FLORES V. AQUA TERRA CULINARY,

1 INC. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT  
2 CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT OF THIS  
3 LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS I MIGHT HAVE.” Any Opt-Out request  
4 that is not postmarked by the Response Deadline will be invalid. In the event that, prior to the Response  
5 Deadline, any Class Notice mailed to a Settlement Class Member is returned as having been undelivered  
6 by the U.S. Postal Service, the Settlement Administrator shall perform a skip trace search and seek an  
7 address correction for such Settlement Class Member(s), and a second Class Notice will be sent to any  
8 new or different address obtained. Such Settlement Class Member(s) shall have an additional 14 days in  
9 which to Opt-Out.

10 It will be presumed that, if an envelope containing the Class Notice has not been returned within  
11 28 days of the mailing, the Settlement Class Member received the Class Notice. At least 30 days prior to  
12 the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and  
13 Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of  
14 the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of  
15 Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members  
16 to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and  
17 Objectors. Class Counsel shall file this declaration with the Court.

18 If the Settlement Administrator determines that an Opt-Out request returned by a Settlement Class  
19 Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a  
20 deficiency letter to that Settlement Class Member identifying the problem.

21 Those Settlement Class Members who do not timely Opt-Out will be bound by the Release of  
22 Released Claims set forth in Section I, Paragraph 29 of this Stipulation.

23 **4. Objections.** The Class Notice shall inform the Settlement Class Members of their right  
24 to object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class  
25 Settlement must submit a written objection to the Settlement Administrator no later than the Response  
26 Deadline. The objection must include the case name and number and must set forth, in clear and concise  
27 terms, a statement of the reasons why the objector believes that the Court should find that the proposed  
28 Class Settlement is not in the best interest of the Settlement Class and the reasons why the Class Settlement



1 should not be approved, including the legal and factual arguments supporting the objection. If an objector  
2 also wishes to appear at the Final Approval Hearing, in person or through an attorney, he or she *must also*  
3 file a notice of intention to appear at the same time as the objection is filed. The Settlement Administrator  
4 will promptly serve copies of any objection or notice of intention to appear on Class Counsel and Defense  
5 Counsel. Unless otherwise ordered by the Court, Settlement Class Members shall not be entitled to appear  
6 and or object at the Final Approval Hearing unless they have submitted a timely written objection and  
7 notice of intention to appear pursuant to this Section. Settlement Class Members who have properly and  
8 timely submitted objections may appear at the Final Approval Hearing, either in person or through a  
9 lawyer retained at their own expense.

10 **VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

11 **1. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class  
12 Members are settled for the Gross Settlement Amount of \$140,000.00, which will be allocated as follows:

- 13 a. The Administrative Expenses, not to exceed \$8,500.00;
- 14 b. The Class Attorney Fees and Expenses not to exceed \$46,666.66 in fees and  
15 expenses not to exceed \$8,000.00;
- 16 c. The Incentive Award, not to exceed \$3,500.00; and
- 17 d. The PAGA award of \$1,500 to be sent to the LWDA for PAGA penalties.

18 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator  
19 shall calculate the estimated Net Settlement Amount based on the estimated values in Section 1(a-c & d)  
20 prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement  
21 Administrator shall calculate the final Net Settlement Amount based on the actual values in Section 1 (a-  
22 c & d). The Net Settlement Amount is approximated to be \$71,833.34.

23 **2. Calculation of the Individual Settlement Amounts.** Individual Settlement Amounts to  
24 be paid to Class Participants shall be paid from the Net Settlement Amount. The portion of the Net  
25 Settlement Amount payable to each Class Participant will be calculated as follows:

26 The Settlement Administrator shall divide the Net Settlement Amount by the total number of  
27 workweeks Settlement Class Members were employed during the Class Period, in order to determine the  
28 amount each Settlement Class Member is entitled to for each workweek s/he was employed by Defendant

1 (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly Amount by the total  
2 number of workweeks that each Settlement Class Member was employed and deduct all Employee’s  
3 Taxes and Required Withholding attributable to wages to arrive at the Individual Settlement Amount for  
4 that Class Member. Defendant will provide the Settlement Administrator with any information reasonably  
5 necessary to perform the calculation of number of pay periods for each Settlement Class Member, and any  
6 other reasonably required information the Settlement Administrator requests to perform the calculations  
7 required under this Settlement Agreement. Defendant shall have no responsibility for deciding the validity  
8 of the Individual Settlement Amounts or any other payments made pursuant to this Stipulation, shall have  
9 no involvement in or responsibility for the determination or payment of Employee’s Taxes and Required  
10 Withholding, and shall have no liability for any errors made with respect to such Employee’s Taxes and  
11 Required Withholding. Although the Settlement Administrator will calculate and pay the standard  
12 Employee’s Taxes and Required Withholding on the portion of the Individual Settlement Amounts  
13 constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall  
14 be solely responsible for any and all tax obligation associated with their respective Individual Settlement  
15 Amounts and Incentive Awards.

16 **3. Time for Settlement Administrator to Make Payments Subject to the Payment Plan**

17 Pursuant to the Payment Plan, Defendant shall make series of six payments of \$23,333.33. Within  
18 5 calendar days of Defendant’s fourth payment, the Settlement Administrator shall:

- 19 • Pay the Employee’s Taxes and Required Withholding associated with each Class  
20 Participant’s Individual Settlement Amount and mail the Individual Settlement Amount  
21 to each Class Participant, by first-class U.S. mail, to the last-known address;
- 22 • Pay the Plaintiff the Incentive Award approved by the Court;
- 23 • Pay the PAGA penalties to the LWDA;
- 24 • Pay itself its settlement administration fees;

25 Within 5 calendar days of Defendant’s fifth payment, the Settlement Administrator shall:

- 26 • Pay a portion of Class Counsel’s Fees and Expenses approved by the Court.

27 Within 5 calendar days of Defendant’s sixth payment, the Settlement Administrator shall:

- 28 • Pay the remaining portion of Class Counsel’s Fees approved by the Court.

1 In the event that any Class Participant is deceased, payment shall be made payable to the estate of that  
2 Settlement Class Member and delivered to the executor or administrator of that estate, unless the  
3 Settlement Administrator has received an affidavit or declaration pursuant to Cal. Probate Code § 13101,  
4 in which case payment shall be made to the affiant(s) or declarant(s).

5 **4. Non-Cashed Settlement Checks.** Class Participants shall have 90 days to cash their  
6 checks. Any funds associated with uncashed checks shall be sent to the State of California's Department  
7 of Industrial Relations unclaimed wage fund on behalf in the name of Class Member(s) who did not cash  
8 their check.

9 **VIII. NULLIFICATION OF THIS STIPULATION**

10 **1. Non-Approval of the Stipulation.** If (a) the Court should for any reason fail to approve  
11 this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason fail to enter a  
12 judgment with prejudice of the Action, or (c) the approval of the Class Settlement and judgment is  
13 reversed, modified or declared or rendered void, then the Class Settlement and conditional class  
14 certification shall be considered null and void, and neither the Class Settlement, conditional class  
15 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and all  
16 parties to the Class Settlement shall stand in the same position, without prejudice, as if the Class Settlement  
17 had been neither entered into nor filed with the Court. Notwithstanding the foregoing, the Parties may  
18 attempt in good faith to cure any perceived defects in the Stipulation to facilitate approval.

19 **2. Parties' Rights to Void Class Settlement.** If more than 6 Class Members timely Opt-  
20 Out, Defendant shall have the exclusive right to void this Class Settlement. In the event that the class list  
21 contains 6 more than 29 individuals, then the Gross Settlement shall be increased proportionately for each  
22 additional individual over 29. Should either party choose to void the Class Settlement under this  
23 paragraph, such party shall be responsible for all Settlement Administrator fee and costs actually incurred.

24 **3. Invalidation.** Invalidation of any material portion of the Class Settlement shall invalidate  
25 the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that the remaining  
26 provisions of the Class Settlement are to remain in full force and effect.

27 **4. Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class  
28 Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to fund the

1 Gross Settlement Amount or take any other actions required by this Stipulation until all appeal rights have  
2 been exhausted by operation of law.

3 **IX. MOTION FOR COURT APPROVAL**

4 **1. Preliminary Approval.** Class Counsel will submit this Stipulation to the Court along  
5 with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present the  
6 Class Settlement to the Court for preliminary approval in a timely fashion. The Court's preliminary  
7 approval of the Class Settlement shall be embodied in an Order substantially in the form attached hereto  
8 as **Exhibit 3**.

9 **2. Final Approval.** The Final Approval and Fairness Hearing shall be held before the Court.  
10 At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the final order  
11 certifying the Class for settlement purposes only and approving the Class Settlement as being fair,  
12 reasonable and adequate to the Class Participants within the meaning of California Rules of Court, Rule  
13 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of the  
14 Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall submit  
15 to the Court such pleadings and/or evidence as may be required for the Court's determination.

16 **X. RELEASES AND WAIVERS**

17 **1. Release of Claims by Settlement Class.** Upon the Effective Date, each Settlement Class  
18 Member who has not submitted a timely Opt-Out request, and Plaintiff, each releases the Released Parties,  
19 and each of them, of and from any and all Released Claims through date of preliminary approval.

20 It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever settle,  
21 compromise, and discharge the Released Claims.

22 Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release of  
23 Released Claims as a result of the Class Settlement and to the terms of the final judgment and the  
24 satisfaction of such judgment.

25 Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed  
26 that their claims for wages and/or penalties in the Lawsuit are disputed, and that the Settlement payments  
27 constitute payment of all sums allegedly due to them. Class Members will be deemed to have  
28

1 acknowledged and agreed that California Labor Code Section 206.5 is not applicable to the Settlement  
2 payments. That section provides in pertinent part as follows:

3 **“An employer shall not require the execution of a release of a claim or right on account of wages**  
4 **due, or to become due, or made as an advance on wages to be earned, unless payment of those wages**  
5 **has been made.”**

6         **2.         Release of Claims by Plaintiff.** Plaintiff, on behalf of himself and his heirs, executors,  
7 administrators, and representatives, shall and does hereby forever release, discharge and agree to hold  
8 harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations,  
9 promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,  
10 losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity,  
11 which he may now have or may have after the signing of this Stipulation, against Defendant arising out  
12 of or in any way connected with his employment with Defendant including, the Released Claims, claims  
13 that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences,  
14 or matters between the parties occurring prior to July 21, 2017. Without limiting the generality of the  
15 foregoing, this release shall include, but not be limited to, any and all claims under the (a) Americans With  
16 Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil  
17 Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act,  
18 as amended; (f) the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee  
19 Retirement Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act;  
20 (j) the Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966;  
21 (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the California  
22 Labor Code; (p) the California Government Code; (q) the California Civil Code; and (r) any and all other  
23 federal, state and local statutes, ordinances, regulations, rules and other laws, and any and all claims based  
24 on constitutional, statutory, common law or regulatory grounds as well as any other claims based on  
25 theories of wrongful or constructive discharge, breach of contract or implied contract, fraud,  
26 misrepresentation, promissory estoppel or intentional and/or negligent infliction of emotional distress, or  
27 damages under any other federal, state or local statutes, ordinances, regulations, rules or laws. This release  
28 is for any and all relief, no matter how denominated, including, but not limited to, back pay, front pay,  
vacation pay, bonuses, compensatory damages, tortious damages, liquidated damages, punitive damages,

1 damages for pain and suffering, and attorney fees and costs, and Plaintiff hereby forever releases,  
2 discharges and agrees to hold harmless Defendant and the Released Parties from any and all claims for  
3 attorney fees and costs arising out of the matters released in this Stipulation.

4 Plaintiff specifically acknowledge that he is aware of and familiar with the provisions of Section  
5 1542, which provides as follows:

6 **A general release does not extend to claims which the creditor does not know or suspect to exist in**  
7 **his or her favor at the time of executing the release, which if known by him or her must have**  
8 **materially affected his or her settlement with the debtor.**

9 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits he  
10 may have under Section 1542 as well as any other statutes or common law principles of a similar effect.  
11 Plaintiff may hereafter discover facts in addition to or different from those which he now knows or  
12 believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates and  
13 agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally and forever settle and  
14 release any and all claims against the Released Parties, known or unknown, suspected or unsuspected,  
15 contingent or non-contingent, that were asserted or could have been asserted upon any theory of law or  
16 equity without regard to the subsequent discovery of existence of such different or additional facts.

16 **XI. DUTIES OF THE PARTIES**

17 **1. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to  
18 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be limited  
19 to, execution of such other documents and the taking of such other actions as may reasonably be necessary  
20 to fulfill the terms of this Class Settlement. The Parties shall use their best efforts, including all efforts  
21 contemplated by this Stipulation and any other efforts that may become necessary by court order or  
22 otherwise, to effectuate this Stipulation and the terms set forth herein. As soon as practicable after  
23 execution of this Stipulation, Class Counsel, with the cooperation of Defendant and Defense Counsel,  
24 shall take all necessary and reasonable steps to secure the Court's final approval of this Stipulation.

25 **2. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of  
26 the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use their  
27 best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral  
28 attack.

1           **3.       Duties Prior to Court Approval.** Class Counsel shall promptly submit this Stipulation  
2 to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and  
3 reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall apply to the Court for  
4 the entry of a preliminary order substantially in the form filed concurrently herewith as **Exhibit 3**,  
5 scheduling a hearing on the question of whether the proposed Class Settlement should be approved as fair,  
6 reasonable, and adequate as to the Settlement Class Members, approving as to form and content the  
7 proposed Class Notice and Share Form attached hereto as **Exhibit 1** and **Exhibit 2**, respectively, and  
8 directing the mailing of the Class Notice to Settlement Class Members. While Defendant can reserve its  
9 right to object to facts or assertions made in the moving papers, Defense Counsel shall file a notice of non-  
10 opposition to the granting of the motion for preliminary approval or join in the motion.

11       **XII.   MISCELLANEOUS PROVISIONS**

12           **1.       Voiding the Stipulation.** Pending Court approval and other than as provided in Section  
13 VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation  
14 shall, at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and effect,  
15 and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any other  
16 court or forum. If either party decides to void the Settlement, then the Settlement and conditional class  
17 certification shall be considered void, and neither the Settlement Agreement, conditional class  
18 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the  
19 Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered  
20 into nor filed with the Court. Should either party choose to void the Class Settlement under this paragraph,  
21 such party shall be responsible for all Settlement Administrator fees and costs actually incurred.

22           **2.       Different Facts.** The Parties hereto, and each of them, acknowledge that, except for  
23 matters expressly represented herein, the facts in relation to the dispute and all claims released by the  
24 terms of this Stipulation may turn out to be other than or different from the facts now known by each party  
25 and/or its counsel, or believed by such party or counsel to be true, and each party therefore expressly  
26 assumes the risk of the existence of different or presently unknown facts, and agrees that this Stipulation  
27 shall be in all respects effective and binding despite such difference.

1           **3.       No Prior Assignments.** The Parties represent, covenant, and warrant that they have not  
2 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to  
3 any person or entity any portion of any liability, claim, demand, action, cause of action, or right herein  
4 released and discharged except as set forth herein.

5           **4.       Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an  
6 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party, or  
7 any other person, and the Parties specifically disclaim any liability, culpability, negligence, or wrongdoing  
8 toward the each other or any other person. Each of the Parties has entered into this Stipulation with the  
9 intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and  
10 contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing or liability, or  
11 of the truth of any factual allegations in the Action. Nothing herein shall constitute any admission by  
12 Defendant regarding the merits of the Claims in this Action, including but not limited to claims for unpaid  
13 wages under California and/or federal law. Nothing herein shall constitute an admission by Defendant  
14 that the Action was properly brought as a class or representative action other than for settlement purposes.  
15 To the contrary, Defendant has denied and continues to deny each and every material factual allegation  
16 and all Claims. To this end, the Class Settlement of the Action, the negotiation and execution of this  
17 Stipulation, and all acts performed or documents executed pursuant to or in furtherance of this Stipulation  
18 or the Class Settlement are not, shall not be deemed to be, and may not be used as, an admission or  
19 evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the factual  
20 allegations in the Complaint in the Action; and are not, shall not be deemed to be, and may not be used  
21 as, an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal or  
22 administrative proceeding in any court, administrative agency or other tribunal.

23           **5.       Media Or Press.** Plaintiff and Defendant, and their respective counsel, recognize, and  
24 accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Class  
25 Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters relating  
26 to the litigation of the Action, including discovery proceedings therein, and evidence obtained during the  
27 course of the Action, shall not be discussed with or presented to the media or press.



1           **6.        Non-Retaliation.** Defendant understands and acknowledge that it has a legal obligation  
2 not to retaliate against any Settlement Class Member who elects to participate in the Class Settlement or  
3 elects to Opt-Out of the Class Settlement. Defendant will refer any inquiries regarding this Class  
4 Settlement to the Settlement Administrator or Class Counsel and will not discourage Settlement Class  
5 Members who are employees, directly or indirectly, from making claims, opting out or objecting to the  
6 Class Settlement.

7           **7.        Construction.** The Parties hereto agree that the terms and conditions of this Stipulation  
8 are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that  
9 this Stipulation is not to be construed in favor of or against any party by reason of the extent to which any  
10 party or its counsel participated in the drafting of this Stipulation. If any of the dates in the Stipulation  
11 fall on a weekend, bank or court holiday, the time to act shall be extended to the next business day.

12           **8.        Governing Law.** This Stipulation is intended to and shall be governed by the laws of the  
13 State of California, without regard to conflict of law principles, in all respects, including execution,  
14 interpretation, performance, and enforcement.

15           **9.        Notices.** Except for Settlement Class Member notices required to be made by the  
16 Settlement Administrator, any and all notices or other communications required or permitted under this  
17 Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party or their  
18 counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery addressed to the  
19 address of the party appearing in this Stipulation.

20           **10.       Captions and Interpretations.** Section titles or captions contained herein are inserted as  
21 a matter of convenience and for reference only and in no way define, limit, extend, or describe the scope  
22 of this Stipulation or any provision thereof.

23           **11.       Modification.** This Stipulation may not be changed, altered, or modified, except in  
24 writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except  
25 by performance in accordance with its terms or by a writing signed by the Parties.

26           **12.       Integration Clause.** This Stipulation contains the entire agreement between the Parties  
27 relating to the Class Settlement of the Action and the transactions contemplated thereby, and all prior or  
28 contemporaneous agreements, understandings, representations, and statements, whether oral or written,

1 and whether by a party or such party's legal counsel, are hereby superseded. No rights under this  
2 Stipulation may be waived except in writing as provided above.

3 **13. Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit  
4 of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out) and their  
5 respective present and former heirs, trustees, executors, administrators, representatives, officers, directors,  
6 shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension  
7 and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint  
8 ventures, predecessors, successors, and assigns.

9 **14. Corporate Signatories.** Any person executing this Stipulation or any such related  
10 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises,  
11 for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or  
12 partnership to execute this Stipulation or any such related document.

13 **15. Execution in Counterparts.** This Stipulation shall become effective upon its execution  
14 by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of  
15 counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

16 **16. Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for  
17 herein, each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise, incurred  
18 by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to  
19 this Stipulation.

20 **17. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this  
21 Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs.

1 IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the  
2 date below their signatures or the signature of their representatives. The date of the Stipulation shall be  
3 the date of the latest signature.

4  
5 Sergio Flores

6 Aqua Terra Culinary, Inc.

7 Dated: 8/13/2017

8 Printed: Dorey Ford

9 Title: President / CEO

10 Dated: 8/27/2017

11 APPROVED AS TO FORM AND CONTENT

12 LAW OFFICE OF BRIAN MATHIAS

13 HUDSON, MARTIN, FERRANTE, WITTEN &  
DE MARIA

14 By: Brian C Mathias

15 By: Andrea Upton

16 Brian Mathias, Esq.

17 Andrea Upton, Esq.

18 Attorney for Plaintiff Sergio Flores and  
the Putative Class

19 Attorney for Defendant Aqua Terra Culinary,  
Inc.

20 MELMED LAW GROUP P.C

21 By: Jonathan Melmed

22 Jonathan Melmed, Esq.

23 Attorney for Plaintiff Sergio Flores and  
the Putative Class

# First Amendment to Settlement Agreement

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

Sergio Flores, individually and on behalf of all  
others individually situated,

Plaintiff

vs.

Aqua Terra Culinary, Inc. dba Samson Café,  
Point Pinos Grill, a California Corporation;  
Dory Ford, an individual,

Defendants.

Case No. 17CV002672

**CLASS ACTION**

**AMENDMENT TO THE JOINT  
STIPULATION OF SETTLEMENT AND  
RELEASE OF CLASS ACTION**

1 Brian Mathias (SBN 282494)  
2 LAW OFFICES OF BRIAN MATHIAS  
3 P.O. Box 2874  
4 Aptos, California 95001  
5 Telephone: (831) 531-7141

6 Jonathan Melmed (SBN 290218)  
7 MELMED LAW GROUP P.C.  
8 1180 S. Beverly Drive, Suite 610  
9 Los Angeles, California 90035  
10 Telephone: (310) 824-3828  
11 Facsimile: (310) 862-6852

12 *Attorneys for Plaintiff, Sergio Flores*

13 Susannah Ashton, Esq.  
14 HUDSON, MARTIN, FERRANTE, STREET, WITTEN & DE MARIA  
15 490 Calle Principal  
16 Monterey, California 93940  
17 Telephone: (831) 375-3151  
18 Facsimile: (831) 375-0131

19 *Attorney for Defendant, Aqua Terra Culinary, Inc.*

1 This Amendment to Joint Stipulation of Settlement and Release of Class Action (“Amendment to  
2 the Stipulation”) is made and entered into by Plaintiff Sergio Flores, individually and as a representative  
3 of the Settlement Class, as defined below, and Aqua Terra Culinary, Inc. (“Defendant”) (collectively  
4 “the Parties”). This Amendment to the Stipulation is subject to the approval of the Court, pursuant to  
5 California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to  
6 consummate settlement of the Action on a class-wide basis subject to the following terms and  
7 conditions.

8 WHEREAS, in or around August, 2017, the Parties entered into and executed the Joint  
9 Stipulation of Settlement and Release of Class Action (the “Stipulation”);

10 WHEREAS, the Stipulation contained a provision which addressed uncashed settlement checks  
11 (section VII, Paragraph 4);

12 WHEREAS, section VII, Paragraph 4 of the Stipulation indicated that “Class Participants shall  
13 have 90 days to cash their checks. Any funds associated with uncashed checks shall be sent to the State  
14 of California’s Department of Industrial Relations unclaimed wage fund on behalf in the name of Class  
15 Member(s) who did not cash their check.”

16 WHEREAS, the Parties now desire to amend section VII, paragraph 4, so as to conform with the  
17 requirements of California Civil Code section 384.

18 NOW THEREFORE, the parties hereby agree to strike section VII, paragraph 4 of the  
19 Stipulation, and replace it with the following provision:

20 **“Non-Cashed Settlement Checks; Cy Pres.** Any funds from any uncashed check, or any unpaid  
21 or unclaimed funds, plus any accrued interest, shall be distributed under the doctrine of cy pres as  
22 follows: 25% to the State Treasury for the Trial Court Improvement and Modernization Fund and 75%  
23 to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch.”

24 Accordingly, the Parties do not agree to modify any other provision of the Stipulation.  
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1 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Amendment to the  
2 Stipulation on the date below their signatures or the signature of their representatives. The date of the  
3 Amendment to the Stipulation shall be the date of the latest signature.

4  
5 Sergio Flores

Aqua Terra Culinary, Inc.

6   
\_\_\_\_\_

\_\_\_\_\_

7 Dated: 12/14/2017

Printed: \_\_\_\_\_

8 Title: \_\_\_\_\_

9 Dated: \_\_\_\_\_

10  
11 **APPROVED AS TO FORM AND CONTENT**

12 LAW OFFICE OF BRIAN MATHIAS

HUDSON, MARTIN, FERRANTE, STREET,  
WITTEN & DE MARIA

13 

14 By: \_\_\_\_\_  
15 Brian Mathias, Esq.  
16 Attorney for Plaintiff Sergio Flores and  
17 the Putative Class

18 By: \_\_\_\_\_  
19 Susannah Ashton, Esq.  
20 Attorney for Defendants

21 MELMED LAW GROUP P.C

22 By: 

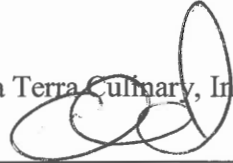
23 Jonathan Melmed, Esq.  
24 Attorney for Plaintiff Sergio Flores and  
25 the Putative Class  
26  
27  
28



1 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Amendment to the  
2 Stipulation on the date below their signatures or the signature of their representatives. The date of the  
3 Amendment to the Stipulation shall be the date of the latest signature.

4  
5 Sergio Flores

Aqua Terra Culinary, Inc.



6 \_\_\_\_\_  
7 Dated: \_\_\_\_\_

Printed: Dory Ford

Title: President / CEO

Dated: 12/28/17

10 **APPROVED AS TO FORM AND CONTENT**

11  
12 LAW OFFICE OF BRIAN MATHIAS

HUDSON, MARTIN, FERRANTE, STREET,  
WITTEN, & DE MARIA

13  
14 By: \_\_\_\_\_  
Brian Mathias, Esq.  
15 Attorney for Plaintiff Sergio Flores and  
the Putative Class

By: \_\_\_\_\_  
Susannah Ashton, Esq.  
Attorney for Defendants

16  
17 MELMED LAW GROUP P.C

18  
19 By: \_\_\_\_\_  
Jonathan Melmed, Esq.  
Attorney for Plaintiff Sergio Flores and  
20 the Putative Class

# Second Amendment to Settlement Agreement

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MONTEREY**

Sergio Flores, individually and on behalf of all  
others individually situated,

Plaintiff

vs.

Aqua Terra Culinary, Inc. dba Samson Café,  
Point Pinos Grill, a California Corporation;  
Dory Ford, an individual,

Defendants.

Case No. 17CV002672

**CLASS ACTION**

**SECOND AMENDMENT TO THE JOINT  
STIPULATION OF SETTLEMENT AND  
RELEASE OF CLASS ACTION**

1 Brian Mathias (SBN 282494)  
2 LAW OFFICES OF BRIAN MATHIAS  
3 P.O. Box 2874  
4 Aptos, California 95001  
5 Telephone: (831) 531-7141

6 Jonathan Melmed (SBN 290218)  
7 MELMED LAW GROUP P.C.  
8 1180 S. Beverly Drive, Suite 610  
9 Los Angeles, California 90035  
10 Telephone: (310) 824-3828  
11 Facsimile: (310) 862-6852

12 *Attorneys for Plaintiff, Sergio Flores*

13 Susannah Ashton, Esq.  
14 HUDSON, MARTIN, FERRANTE, STREET, WITTEN & DE MARIA  
15 490 Calle Principal  
16 Monterey, California 93940  
17 Telephone: (831) 375-3151  
18 Facsimile: (831) 375-0131

19 *Attorney for Defendant, Aqua Terra Culinary, Inc.*

1 This Second Amendment to Joint Stipulation of Settlement and Release of Class Action  
2 (“Second Amendment to the Stipulation”) is made and entered into by Plaintiff Sergio Flores,  
3 individually and as a representative of the Settlement Class, as defined below, and Aqua Terra Culinary,  
4 Inc. (“Defendant”) (collectively “the Parties”). This Amendment to the Stipulation is subject to the  
5 approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for  
6 the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to  
7 the following terms and conditions.

8 WHEREAS, in or around August, 2017, the Parties entered into and executed the Joint  
9 Stipulation of Settlement and Release of Class Action (the “Stipulation”);

10 WHEREAS, the Stipulation contained a provision which addressed uncashed settlement checks  
11 (section VII, Paragraph 4);

12 WHEREAS, section VII, Paragraph 4 of the Stipulation indicated that “Class Participants shall  
13 have 90 days to cash their checks. Any funds associated with uncashed checks shall be sent to the State  
14 of California’s Department of Industrial Relations unclaimed wage fund on behalf in the name of Class  
15 Member(s) who did not cash their check.”

16 WHEREAS, the Parties amended section VII, paragraph 4, in the Amendment to the Joint  
17 Stipulation of Settlement and Release of Class Action, filed with the Court on January 14, 2018.

18 WHEREAS, the Parties now desire to fully and completely void the Amendment to the Joint  
19 Stipulation and Release of Class Action, which previously provided an allocation of uncashed checks.

20 WHEREAS, the Parties now desire to fully and completely void the Amendment to the Joint  
21 Stipulation and Release of Class Action, which previously provided an allocation of uncashed checks.

22 NOW THEREFORE, the parties hereby agree to strike section VII, paragraph 4 of the  
23 Stipulation, and replace it with the following provision:

24 **“Non-Cashed Settlement Checks; Cy Pres.** Any funds from any uncashed check, or any unpaid  
25 or unclaimed funds, plus any accrued interest, shall be distributed under the doctrine of cy pres as  
26 follows: 25% to the State Treasury for the Trial Court Improvement and Modernization Fund and 25%  
27 to the State Treasury for deposit into the Equal Access Fund of the Judicial Branch and 50% to the  
28 nonprofit organization California Rural Legal Assistance, Inc.

1 Accordingly, the Parties do not agree to modify any other provision of the Stipulation.

2 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Amendment to the  
3 Stipulation on the date below their signatures or the signature of their representatives. The date of the  
4 Amendment to the Stipulation shall be the date of the latest signature.

5  
6 Sergio Flores

Aqua Terra Culinary, Inc.

7  
8 Dated: 3/15/2018

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

11 **APPROVED AS TO FORM AND CONTENT**

13 LAW OFFICE OF BRIAN MATHIAS

HUDSON, MARTIN, FERRANTE, STREET,  
WITTEN & DE MARIA

14  
15 By: Brian C. Mathias

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

16 Brian Mathias, Esq.  
Attorney for Plaintiff Sergio Flores and  
the Putative Class

Jeannette K. Witten, Esq.  
Attorney for Defendants

17  
18 MELMED LAW GROUP P.C

19 By: Jonathan Melmed

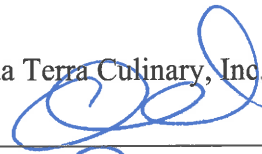
20 Jonathan Melmed, Esq.  
Attorney for Plaintiff Sergio Flores and  
the Putative Class

1 Accordingly, the Parties do not agree to modify any other provision of the Stipulation.

2 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Amendment to the  
3 Stipulation on the date below their signatures or the signature of their representatives. The date of the  
4 Amendment to the Stipulation shall be the date of the latest signature.

5  
6 Sergio Flores

Aqua Terra Culinary, Inc.



7 \_\_\_\_\_  
8 Dated: \_\_\_\_\_

Printed: Daisy Flores

Title: President / CEO

Dated: 3/16/18

9  
10  
11 **APPROVED AS TO FORM AND CONTENT**

12  
13 LAW OFFICE OF BRIAN MATHIAS

HUDSON, MARTIN, FERRANTE, STREET,  
WITTEN & DE MARIA

14  
15 By: \_\_\_\_\_  
16 Brian Mathias, Esq.  
17 Attorney for Plaintiff Sergio Flores and  
18 the Putative Class

19 By: Jeannette K. Witten  
20 Jeannette K. Witten, Esq.  
21 Attorney for Defendants

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27  
28  
MELMED LAW GROUP P.C

By: \_\_\_\_\_  
Jonathan Melmed, Esq.  
Attorney for Plaintiff Sergio Flores and  
the Putative Class