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16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN DIEGO**

19
20 JOEL NOLASCO SUAREZ, an individual, on
behalf of himself and others similarly situated,

21 Plaintiff,

22 vs.

23 MAZATLAN, INC.; and DOES 1 thru 50,
24 inclusive

25 Defendant.

Case No. 37-2015-00002978-CU-OE-CTL

[Assigned for all purposes to Hon. Joel M.
Pressman, Dept. C-66]

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

Action Filed: January 27, 2015
Trial Date: None Set

1 This Joint Stipulation of Class Action Settlement ("Joint Stipulation") is made and entered
2 into by and between Plaintiff Joel Nolasco Suarez ("Plaintiff"), in his individual capacity, as class
3 representative, and as private attorney general, on one hand, and Defendant Mazatlan, Inc. on the
4 other hand. Subject to the approval of the Court, the above-referenced action is being
5 compromised and settled under the terms and conditions set forth herein. This Joint Stipulation
6 will be binding on Plaintiff and the class he purports to represent, and Defendant, subject to the
7 terms and conditions hereof and approval of the Court. The Parties have also separately signed an
8 agreement for attorney's fees in this matter.

9 **I. DEFINITIONS**

10 To the extent terms or phrases used in this Joint Stipulation are not specifically defined
11 below, but are defined elsewhere in this Joint Stipulation, they are incorporated herein by
12 reference.

13 "Action" or "Lawsuit" means the above-entitled class action pending in San Diego Superior
14 Court for the State of California. "Attorney Fee Amount" means reasonable attorney fees incurred
15 by Class Counsel and actually spent in the prosecution of this
16 Action. The parties have agreed that the Attorney Fee Amount shall not exceed \$145,000 (with the
17 exception that if the Attorney Fee Amount is not paid within 12 months of the Effective Date
18 interest will accrue) and is subject to a reasonableness and good faith determination by the Court
19 according to proof. Defendant shall not be required to pay any attorney fees or costs to Class
20 Counsel above the amount stated herein.

21 "Class" or "Class Members" means all non-exempt, hourly-paid employees who worked for
22 Defendant Mazatlan, Inc. or any of its affiliates, subsidiaries, or successors, during the Class
23 Period, and who did not opt out of the Class. This includes 221 Class Members.

24 "Class Counsel" means Kingsley & Kingsley, APC.

25 "Class Notice" means the Notice of Class Action Settlement, in substantially the same
26 form as **Exhibit A** attached hereto, or as otherwise approved by the Court, which is to be mailed to

1 Class.

2 “Class Period” means the period of time from January 27, 2011 to December 14, 2016.

3 “Complaint” refers to the operative complaint filed in the above-entitled case.

4 “Defendant” or “Mazatlan” means Mazatlan, Inc. and any of its officers, directors, owners,
5 employees, agents, assigns, parent entities, subsidiaries, affiliates, predecessors, and successors,
6 including without limitations Honey’s Bistro, LLC; Swami’s Oceanside, LLC; Swami’s La Mesa,
7 LLC; Swami’s North Park, LLC; La Mesa Bistro and Bakery, LLC; Swami’s Carlsbad, LLC;
8 Swami’s Escondido, LLC; and Swami’s 101, LLC.

9 “Effective Date” means the date by which the Court’s order granting final approval of this
10 Joint Stipulation becomes final. Such order becomes final upon the later of: (a) the day after the
11 last date by which final judgment in this Action may be appealed, and no appeal is filed; or (b) if
12 an appeal of the final judgment is filed, and the appeal is finally disposed of by ruling, dismissal,
13 denial, or otherwise, the day after the last date for filing a request for further review of the Court of
14 Appeal’s decision passes, and no further review is requested; or (c) if an appeal of the final
15 judgment is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the
16 Court of Appeal, and review of the Court of Appeal’s decision is requested, the day after the
17 request for review is denied with prejudice and/or no further review of the judgment can be
18 requested; or (d) if review is accepted, the day the United States Supreme Court affirms the Joint
19 Stipulation.

20 “Final Approval” means the date upon which the Court enters an order granting final
21 approval of this Joint Stipulation, after having determined that the settlement is fair, adequate, and
22 reasonable to the Class, following notice to the Class and a hearing on the fairness of the
23 settlement.

24 “Final Approval Hearing” means the final hearing held to ascertain the fairness,
25 reasonableness, and adequacy of the Joint Stipulation, at which time the Court will enter its order
26 approving the Joint Stipulation on a final basis.

“Gross Settlement Amount” or “Gross Settlement Payment” means the amount that Defendant will pay to resolve this Action, based on the aggregation of the agreed-upon settlement value of individual claims, which is Two Hundred and Forty-Seven Thousand Dollars (\$247,000). The Gross Settlement Amount is inclusive of settlement payments to Class Members, Settlement Administrator’s Fees in the estimated amount of \$18,000, Class Counsel’s costs not to exceed \$15,000.00, incentive payment to Plaintiff in the amount of \$10,000, and payment to the Labor and Workforce Development Agency (“LWDA”) for penalties under California Labor Code § 2699 et seq. (“PAGA”) in the amount of \$5,000.

“Net Settlement Amount” means the Gross Settlement Amount less the Settlement Administrator’s Fees, payments for Class Counsel’s costs, Plaintiff’s incentive payment, and payment to the LWDA for PAGA penalties.

“Parties” means Defendant and Plaintiff.

“Preliminary Approval” means the court order preliminarily approving this Joint Stipulation.

“Preliminary Approval Hearing” means the hearing held on the motion for preliminary approval of the Joint Stipulation.

“Released Claims” means any and all claims for wages, damages, unpaid costs, penalties, liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable relief, which the Class and/or any Class Member had, or may claim to have, against any of the Released Parties, arising out of the facts, circumstances, and primary rights during the Class Period as set forth in this Action. These claims are released, whether known or unknown, under California Civil Code § 1542.

“Released Parties” means Defendant and all of its past and present owners, officers, directors, shareholders, employees, agents, attorneys, insurers, subsidiaries, and affiliates, and their respective predecessors, successors, and assigns, including but not limited to: Jaime Osuna, Honey’s Bistro, LLC; Swami’s Oceanside, LLC; Swami’s La Mesa, LLC; Swami’s North Park,

1 LLC; La Mesa Bistro and Bakery, LLC; Swami's Carlsbad, LLC; Swami's Escondido, LLC; and
2 Swami's 101, LLC.

3 "Settlement Administrator" means CPT Group, Inc.

4 "Settlement Administrator's Fees" means all fees, costs and expenses relating to the
5 administration of the settlement in this Action, including without limitation, printing and mailing of
6 class notice forms, calculating and determining payments and percentages, regularly updating
7 counsel on the status of administration, and the accounting and maintenance of the Settlement Fund
8 Account.

9 "Settlement Fund Account" means the bank account established under this Joint Stipulation
10 from which all monies payable under this Joint Stipulation will be paid, as set forth herein.

11 "Total Workweeks" means the total number of weeks worked by Class Members during the
12 Class Period according to Defendant's payroll records.

13 **II. PRE-TRIAL PROCEEDINGS AND NEGOTIATIONS**

14 **A. Discovery, Investigation and Research**

15 The Parties investigated facts and law during the prosecution of the Action. The
16 investigation included the exchange of information under formal and/or informal discovery. It also
17 includes motion practice including class certification briefs, numerous conferences between the
18 Parties, and preparing for and attending a full day of mediation with the Hon. Linda Quinn (ret).
19 Counsel for the Parties also investigated applicable law as applied to the facts in the case, potential
20 defenses thereto, and damages claimed by Suarez on behalf of himself and the Class. Discovery
21 focused on Suarez's allegation that Class Members were not paid all wages owed including
22 overtime wages, were not provided with all meal and rest breaks under California law, and
23 received improper wage statements. Discovery included Class Members' time and pay records.
24 The Parties conducted their own evaluations of the potential recoveries based on the claims alleged
25 in the Action.

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1 conclusion. Class Counsel has determined that this Joint Stipulation is in the best interests of
2 Plaintiff and Class Members.

3 **D. Defendant's Denials of Wrongdoing and Benefits of Settlement**

4 Defendant denies generally all claims alleged in the Action and further denies class
5 treatment is appropriate for any purpose other than this settlement. Defendant contends it complied
6 with California and other applicable law. It is Defendant's position that, if litigation continued,
7 class certification would be reversed. Plaintiff is not an adequate class representative, Plaintiff's
8 claims are not typical of the Class Members, and individual issues predominate over common ones.

9 Defendant concluded further litigation of the Action would be protracted and expensive.
10 Defendant further determined it is desirable that the Action be fully and finally settled in the
11 manner and upon the terms and conditions in this Joint Stipulation.

12 **E. Intent of the Settlement**

13 The Joint Stipulation intends to achieve the following: (1) entry of an order approving the
14 Joint Stipulation and granting the monetary relief set forth herein; (2) entry of judgment in
15 accordance with California Rule of Court 3.769(h); and (3) discharge of Released Parties from
16 liability for all Released Claims.

17 **III. PROCEDURAL ISSUES**

18 **A. Preliminary Approval**

19 Class Counsel will submit this Joint Stipulation to the Court with a Motion for Preliminary
20 Approval of Class Action Settlement. Defendant will file a joinder to the Motion for Preliminary
21 Approval of Class Action Settlement.

22 **B. Settlement Administrator**

23 The Settlement Administrator will handle (1) preparing, printing, and mailing the Class
24 Notice to Class Members, (2) calculating payments under the settlement; (3) handling inquiries
25 from Class Members concerning the Class Notice and settlement; (4) providing weekly status
26 reports to Defendant's counsel and Class Counsel regarding the mailings, claim forms, and

1 settlement payments; (5) distributing settlement payments to Class Members and payment to other
2 parties under the terms of this Joint Stipulation; (6) providing due diligence declarations for
3 submission to the Court, as needed; (7) printing and providing Class Members and Plaintiff with
4 tax forms as required under this Joint Stipulation and applicable law, and providing copies of same
5 to Defendant; and (9) such other tasks as the Parties mutually agree or the Court orders the
6 Settlement Administrator to perform.

7 The Settlement Administrator will skip trace and re-mail all returned, undelivered mail
8 within seven (7) days of receiving notice that the mailing was undeliverable. The Settlement
9 Administrator will also handle payment of PAGA penalties to the LWDA, payment of Class
10 Counsel's costs, payment to Plaintiff for his incentive payment, and payment to Class Counsel of
11 the Attorney Fee Amount, as approved by the Court.

12 The Settlement Administrators' Fees are estimated to be \$18,000 and are to be paid from
13 the Gross Settlement Amount.

14 **C. Notice to Class Members**

15 Notice shall be provided to Class Members in the following manner:

16 Within fifteen (15) days of Preliminary Approval, Defendant will provide Settlement
17 Administrator with the following information about each Class Member: (1) name; (2) last known
18 mailing address and telephone number; (3) social security number; (4) dates of employment; and
19 (5) total workweeks worked during the Class Period.

20 Within twenty-one (21) days after the Settlement Administrator's receipt of the class data,
21 the Settlement Administrator will mail the Class Notice, in English and Spanish, to the Class
22 Members via first-class regular U.S. mail. The Class Notice shall be in substantially the same form
23 as that attached hereto as **Exhibit A**. The Settlement Administrator will translate the documents
24 from English to Spanish. Prior to mailing, the Settlement Administrator will perform a search
25 based on the National Change of Address Database information to update and correct for any
26 known or identifiable address changes. It will be conclusively presumed the Class Member

1 received the notice and all of its contents if the envelope containing the Class Notice has not been
2 returned within thirty (30) days of mailing. If a new address is obtained by way of a returned Class
3 Notice, then the Settlement Administrator will promptly forward the original Class Notice to the
4 updated address via first-class regular U.S. mail, indicating on the original Notice the date of such
5 re-mailing.

6 A returned Class Notice will be forwarded only once by the Settlement Administrator.
7 Upon completion of these steps by the Settlement Administrator, Defendant will have satisfied its
8 obligation to provide notice of the class settlement to Class Members. Such persons will be bound
9 by a release of all claims alleged in the Action and by all the terms of the Joint Stipulation and the
10 Court's order and final judgment.

11 Class Members shall have thirty (30) days from the date the Class Notice is first mailed to
12 submit any dispute regarding their estimated settlement payments, including their estimated
13 individual workweeks. Unless a Class Member disputes his/her estimated settlement payment or
14 estimated individual workweeks worked, the Class Member will automatically be mailed a check
15 for his/her pro rata share of the settlement and will be bound by the Joint Stipulation and the
16 Court's order and final judgment.

17 **D. Procedure for Objections to Settlement**

18 Any Class Member who seeks to object to the settlement may serve a copy of the objection
19 to the Settlement Administrator at CPT Group, Inc., 16630 Aston Street, Irvine, California 92606.
20 All objections must be served within thirty (30) days of the date of mailing of the Class Notice.
21 Class Members who do not serve written objections may not object to the settlement by way of
22 appeal.

23 **E. Final Approval**

24 At the Final Approval Hearing, Class Counsel will move the Court for entry of judgment
25 incorporating the Joint Stipulation in accordance with the California Rule of Court 3.769(h). Class
26 Counsel will seek approval of the Joint Stipulation as being fair, reasonable and adequate to the Class

1 Members within the meaning of California Code of Civil Procedure §§ 877 and 877.6. Class Counsel
2 and Defendant's counsel will submit to the Court such pleading and/or evidence as required for the
3 Court's determination. Class Counsel will also submit a cost application to be determined at the
4 Final Approval Hearing. Class Counsel will not seek to recover costs in excess of \$15,000.
5 Additionally, for determination at the Final Approval Hearing, Class Counsel will submit a fee
6 application requesting a reasonableness and good faith determination of Class Counsel's fees which
7 will constitute the Attorney Fee Amount to be paid as set forth in Section IV. Class Counsel will not
8 seek fees in excess of \$145,000.

9 **IV. SETTLEMENT TERMS**

10 **A. Total Settlement Amount**

11 To settle the claims arising out of the facts, circumstances and primary rights set forth in the
12 Action, Defendant will pay the Gross Settlement Amount and separately-negotiated Attorney Fee
13 Amount (together, the "Gross Total Funds").

14 Defendant will pay the Gross Total Funds in two phases. In the first phase, the amount of
15 \$125,000 will be paid within 14 days of Preliminary Approval, or July 3, 2017, whichever is later.
16 In the second phase, Defendant will pay the remainder of \$122,000 and the Attorney Fee Amount,
17 in installments equal to \$10,000 per month until the total is paid, starting within 14 days of the
18 Effective Date. Plaintiff will waive interest if this remainder payment of \$122,000 and Attorney
19 Fee Amount is paid within 12 months of the Effective Date.

20 **B. Establishment of Settlement Fund Account**

21 Within 7 days of Final Approval, the Settlement Administrator will establish the Settlement
22 Fund Account in a non-interest bearing transaction account at a FDIC-insured institution
23 designated by Zale with at least one branch in California.

24 **C. Allocation of Settlement Proceeds**

25 The Gross Settlement Amount is inclusive of and will be allocated as follows:

- 26 (1) Class Counsel's costs, as approved by the Court, in an amount not exceeding
27

1 \$15,000.00;

2 (2) Incentive payment to Plaintiff, as approved by the Court for Plaintiff's service as
3 class representative, in an amount not exceeding \$10,000;

4 (3) Settlement Administrator's Fees, as approved by the Court, in an amount estimated
5 to be \$18,000;

6 (4) PAGA penalties to the LWDA in an amount not exceeding \$3,600 (which is 75% of
7 the \$5,000 allocated to PAGA penalties) and \$1,400 to the Class (an amount already included as
8 part of the Payout Fund);

9 (5) Payout Fund, which is the total money available for payout to Class Members, after
10 deducting the above amounts.

11 **D. Plaintiff's Incentive Payment.**

12 Defendant will not oppose Plaintiff's application for an incentive payment in the amount of
13 \$10,000. Defendant will not be obligated to pay any incentive awards in the Action above this
14 amount. The incentive payment will be paid out of the Gross Settlement Amount and will be paid
15 in the first distribution, as set forth below. This incentive payment will not be considered wages,
16 and the Settlement Administrator will issue Plaintiff a Form 1099 and any other tax forms
17 reflecting such payment. Any incentive payment approved by the Court will be in addition to any
18 distribution to which Plaintiff may be entitled as a Class Member.

19 **E. Payment to the Labor Workforce Development Agency**

20 The Parties agree to allocate \$5,000 of the Gross Settlement Amount to the resolution of all
21 claims for penalties under PAGA. Under Labor Code § 2699(i), 75% (\$3,600) of that amount will be
22 paid to the LWDA. This amount will be paid within 15 days after the Effective Date. The other 25%
23 will remain part of the settlement funds.

24 **F. Class Member Distribution Formula**

25 After deducting Class Counsel's costs, Plaintiff's incentive payment, Settlement
26 Administrator's Fees, and payment to the LWDA for PAGA penalties, the balance (i.e., Payout
27

1 Fund) will be distributed as follows:

- 2 (a) "Total Workweeks" will be the total number of workweeks worked by all Class
3 Members during the Class Period according to Defendant's payroll records.
4 "Individual Workweeks" will be the total number of workweeks worked by each
5 individual Class Member during the Class Period, according to Defendant's payroll
6 records. If Defendant's payroll records reflect that a Class Member worked any
7 amount of time during a workweek, that workweek will be counted as a workweek
8 for purposes of calculating the Total Workweeks and the Individual Workweeks for
9 the particular Class Member. The weeks worked by the Class Members will only
10 include weeks actually worked and will not include any lapses or absences in
11 employment, including for leaves of absence, holidays and vacation periods.
- 12 (b) Each Class Member's "Individual Settlement Payment" will be based on a ratio of
13 the Class Member's Individual Workweeks to the Total Workweeks. The Individual
14 Settlement Payment will be calculated by dividing the Class Member's Individual
15 Workweeks by the Total Workweeks and multiplying by the Net Settlement
16 Amount. The portion of this resulting amount attributable to wages will be subject
17 to tax withholdings, as described below.

18 **G. Distribution to Class Members**

19 The Settlement Administrator will keep Defendant's counsel and Class Counsel apprised of
20 all distributions from the Settlement Fund Account. No person will have any claim against
21 Defendant, Defendant's counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
22 distributions and payments made under this Joint Stipulation.

23 Settlement payments to Class Members and Plaintiff's incentive payment will be
24 distributed in two phases. In the first phase, the amount of \$125,000 will be disbursed within 15
25 days of the Effective Date on a pro rata basis. The Settlement Administrator's Fees, Plaintiff's
26 incentive payment, Class Counsel's costs, and payment to the LWDA, all in an amount approved

1 by the Court, will also be disbursed during this first phase. In the second phase, disbursement to
2 the Class will be made within 15 days of funding the remaining Gross Total Funds, The separately-
3 negotiated Attorney Fee Amount will also be disbursed during this second phase. Only the
4 Settlement Administrator is authorized to make withdrawals or payments from the Settlement
5 Fund.

6 **H. Treatment of Class Settlement Payments**

7 The settlement payments will be subject to withholdings and deductions for the Class
8 Member's portion of required tax withholdings. Class Members will be issued a Form W-2
9 reflecting his or her Individual Settlement Payment. Class Members and Defendant are each
10 responsible for their own share of taxes resulting from the Individual Settlement Payment.

11 Twenty percent (20%) of the class Individual Settlement Payments will be allocated to
12 wage claims. Class Members will be solely responsible for the reporting and payment of any state,
13 local and/or federal income tax, if any, on the amount paid to them under the settlement. If it is
14 determined that the settlement amount, or any portion of it, is taxable income, Class Members will
15 be solely responsible for all liability for taxes and any costs, fees, interest, assessments, penalties,
16 damages, or other losses due to such a determination.

17 **I. Non-Reversionary Settlement; Escheatment**

18 The Parties agree that no part of the Gross Total Funds will revert back to Defendant. Class
19 Members will have ninety (90) days to deposit or otherwise cash their settlement checks. As to the
20 funds that remain in the Settlement Fund Account after said ninety (90) days due to Class
21 Members' failure to deposit or cash their settlement checks, those funds will escheat to the
22 Industrial Relations Unpaid Wages Fund maintained by the California Department of Finance.

23 **J. Release of Claims by Plaintiff and Class**

24 Upon the Effective Date, Plaintiff and Class Members will be deemed to have released the
25 Released Parties of and from all of the Released Claims during the Class Period. These claims
26 include without limitation: (a) all claims for failure to pay wages, including overtime wages; (b) all

1 claims for failure to provide meal and/or rest periods, including payments for missed, short or late
2 meal/rest periods; (c) all claims for the failing to pay wages timely during employment and upon
3 termination; (d) all claims for waiting time penalties; (e) all claims for recordkeeping or pay stub
4 violations; (f) any claim for violation of California Business and Professions Code §§ 17200, *et seq.*,
5 arising from the above-referenced claims and those claims in the Complaint; and (g) all claims for
6 penalties under PAGA.

7 Plaintiff and Class Members' releases include all known and unknown claims that were or
8 could have been asserted based on the facts, circumstances, and/or primary rights in the Action
9 pursuant to Section 1542 of the California Civil Code, which provides:

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

15
16 Upon the Effective Date, Plaintiff and Class Members will be deemed to have waived their
17 rights under Civil Code §1542 for all claims that were or could have been asserted based on the
18 facts, circumstances, and/or primary rights in the Action.

19 In addition, upon the Effective Date and as consideration for his incentive payment, Plaintiff
20 will be deemed to have released the Released Parties of and from all claims arising from his
21 employment with Defendant. These claims include those in the above paragraph and any and all
22 claims relating to or arising from his separation of employment, events of his employment, and any
23 acts that have or could have been asserted in any legal action or proceeding against Defendant,
24 whether known or unknown. It is expressly understood by Plaintiff that among the claims being
25 released are those arising under any federal, state or local law or statute, including without
26 limitation those arising under the California Labor Code, Fair Labor Standards Act, Americans

1 with Disabilities Act, Title VII of the Civil Rights Act of 1964, Employee Retirement Income
2 Security Act, the National Labor Relations Act, California Corporations Code, California Business
3 and Professions Code, the California Fair Employment and Housing Act, the California
4 Constitution (all as amended), and the law of contract and tort, as well as for discrimination,
5 harassment, retaliation, wrongful termination, lost wages, benefits, other employment
6 compensation, emotional distress, medical expenses, other economic and non-economic damages,
7 attorney fees, and costs. This release includes a waiver of all rights under Civil Code § 1542 as set
8 forth above.

9 **V. NULLIFICATION OF THE JOINT STIPULATION**

10 If (a) the Court should for any reason fail to approve this Joint Stipulation in the form
11 agreed to by the Parties, or (b) the Court should for any reason fail to enter a judgment in the
12 Action, or (c) the judgment is reversed, modified or declared or rendered void, this Joint
13 Stipulation will be null and void, and neither this Joint Stipulation, nor any of the related
14 negotiations or proceedings including the Settlement for Class Counsel's Attorney's Fees ("Fee
15 Settlement") entered into concurrently herewith, will be of any force or effect, and all Parties will
16 stand in the same position, without prejudice, as if the Joint Stipulation and Fee Settlement had
17 not been entered into or filed. Invalidation of any material portion of this Joint Stipulation will
18 invalidate this Joint Stipulation in its entirety, unless the Parties subsequently agree in writing that
19 the remaining provisions of the Joint Stipulation are to remain in full force and effect.

20 **VI. DUTIES OF THE PARTIES**

21 **A. Mutual Full Cooperation**

22 The Parties agree to cooperate fully with each other to accomplish and implement the
23 terms of this Joint Stipulation. Such cooperation will include, but not be limited to, execution of
24 such other documents and the taking of such other actions as may reasonably be necessary to
25 fulfill the terms of this Joint Stipulation. The Parties will use their best efforts, including all efforts
26 contemplated by this Joint Stipulation and any other efforts that may become necessary by Court

1 Order, or otherwise, to effectuate this Joint Stipulation and the terms set forth herein. As soon as
2 practicable after execution of this Joint Stipulation, Class Counsel with the cooperation of
3 Defendant and its counsel, will try to secure the Court's Preliminary Approval and Final
4 Approval.

5 **B. Duty to Support and Defend the Settlement**

6 The Parties agree the settlement is fair and reasonable and will so represent to the Court.
7 In addition, the mediator (Hon. Linda Quinn (Ret.)) may execute a declaration supporting the
8 settlement, and the Court may contact the mediator to discuss the settlement and whether or not
9 the settlement is fair and reasonable. The Parties agree to abide by all terms of the Joint
10 Stipulation in good faith and to support the Joint Stipulation fully, and to use their best efforts to
11 defend this settlement from any legal challenge, whether by appeal or collateral attack.

12 **VII. MISCELLANEOUS PROVISIONS**

13 **A. Waiver of Appeals**

14 The Parties and Class Members agree to waive any appellate rights; provided, however,
15 Plaintiff may appeal any reduction in the cost award.

16 **B. No Admission of Liability**

17 This Joint Stipulation is not an admission of liability by Defendant or any of the Released
18 Parties.

19 **C. Non-Disparagement**

20 The Parties agree not publicly disparage each other or the Settlement.

21 **D. Construction**

22 The Parties agree this Joint Stipulation is the result of lengthy, intensive, arm's-length
23 negotiations, and the Joint Stipulation is not to be construed for or against any party for any
24 reason.

25 **E. Choice of Law**

26 This Joint Stipulation is intended to and will be governed by the laws of California,

1 without regard to conflicts of law principles. The Court will retain continuing jurisdiction to
2 enforce the settlement.

3 **F. Captions and Interpretations**

4 Paragraph titles or captions contained herein are inserted as a matter of convenience and for
5 reference only, and in no way define, limit, extend, or describe the scope of this Joint Stipulation or
6 any provision thereof.

7 **G. Modification**

8 This Joint Stipulation may not be changed, altered, or modified, except in writing signed by
9 counsel for the Parties and approved by the Court. This Joint Stipulation may not be discharged
10 except by performance under its terms or by a writing signed by the Parties.

11 **H. Integration Clause**

12 All prior or contemporaneous agreements, understandings, representations, and statements,
13 whether oral or written, between the Parties are merged herein. No rights under this Joint
14 Stipulation may be waived except in writing.

15 **I. Successors and Assigns**

16 This Joint Stipulation will be binding upon and inure to the benefit of the Parties hereto and
17 their respective heirs, trustees, executors, administrators, successors, and assigns.

18 **J. Class Counsel Signatories**

19 Because the Class Members are so numerous, the Parties agree it is impossible or
20 impractical to have each Class Member sign this Joint Stipulation. This Joint Stipulation may be
21 executed on behalf of the Class by Class Counsel and Plaintiff.

22 **K. Plaintiff's Waiver of Right to be Excluded or Object**

23 Plaintiff agrees not to object to any terms of this Joint Stipulation. Non-compliance by
24 Plaintiff with this paragraph will be void and of no force or effect. Any such objection by Plaintiff
25 will therefore void and of no force or effect.

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JOEL NOLASCO SUAREZ

DATED: July __, 2017

KINGSLEY & KINGSLEY, APC

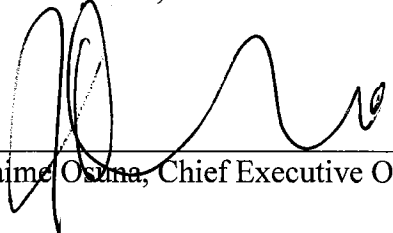
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MAZATLAN, INC.


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