

## SETTLEMENT AGREEMENT

I. Introduction. This Settlement Agreement (“Agreement”) is hereby entered by and between Defendants Tom Douglas Seattle Kitchen, Inc., Terry Avenue Restaurant, Inc., and Thomas Douglas (collectively, “Defendants”), and Clare Thomas (“Plaintiff”), who is acting both individually and in her capacity as proposed class representative for the Settlement Class defined herein in the case entitled *Thomas v. Tom Douglas Seattle Kitchen, Inc. et al.*, King County Superior Court, Civil Case No. 18-2-56923-1 SEA (the “Case”).

### II. Recitals.

A. Class Certification. For purposes of this Settlement only, Plaintiff and Defendants (hereafter, the “Parties”) agree that this Case should be certified and adjudicated as a class action on behalf of the Settlement Class and Subclass defined in Section III.B below.

B. Investigations and Due Diligence. The Parties have conducted informal and formal discovery and investigation of the facts and the law during their respective prosecution and defense of this Case. As part of this review and investigation, the Parties and their counsel have: (1) interviewed witnesses, including Defendants’ employees; (2) collected and analyzed extensive documents, timekeeping data, payroll data, and other information concerning the composition of the Settlement Class, the merits of Plaintiff’s claims and Defendants’ defenses, and the potential damages; and (3) amply considered and analyzed their respective claims or defenses.

C. Mediated Settlement Negotiations. The Parties engaged in mediation before experienced mediator Lou Peterson (the “Mediator”) on June 18, 2019. In connection with the settlement negotiations at mediation, the Parties ultimately executed a CR 2A agreement outlining the terms of the Settlement, dated June 18, 2019. All of the Parties’ settlement negotiations have been conducted in good faith and at arm’s length. Through the Parties’ mediation conference, the Parties have reached a class action settlement of this Case that they believe to be fair, adequate and reasonable, and that Plaintiff believes is in the best interests of the proposed Settlement Class. This Agreement memorializes the terms of the final Settlement agreed to by the Parties. Once this Agreement is executed by all Parties, this Agreement shall supersede the CR 2A Agreement.

### III. Agreements.

NOW, THEREFORE, IT IS HEREBY STIPULATED by the Parties, subject to the approval of the Superior Court, that all claims in this Case are hereby compromised and settled on a class action basis pursuant to the terms and conditions outlined in this Agreement and that, if the Parties’ Settlement is approved by the Superior Court, then the claims relating to rest breaks and meal periods which were or could have been asserted based on the facts alleged in the lawsuit on

behalf of the Settlement Class through February 1, 2019 and the claims relating to the automatic service charge which were or could have been asserted based on the facts alleged in the lawsuit on behalf of the Subclass through September 30, 2018 shall be fully dismissed on the merits and with prejudice, subject to the following terms and conditions:

A. No Admission of Liability. Defendants expressly deny any wrongdoing or violation of federal, state, or local law as alleged in this Action. The Agreement and Settlement are not a concession or admission, and shall not be used against Defendants as an admission with respect to any claim of any fault, concession, or omission by Defendants. Whether or not the Settlement is finalized or approved, neither the Settlement, nor this Agreement, nor any other document, statement, proceeding, or conduct related to the Settlement shall in any event be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants, including, but not limited to, evidence of a presumption, concession, indication, or admission by Defendants, of any liability, fault, wrongdoing, omission, concession or damage; or disclosed, referred to or offered or received in evidence against Defendants in any further proceeding in this Action, or any other civil, criminal, or administrative action or proceeding except for purposes of setting this Action pursuant to the Agreement. This Agreement shall not be admissible in any court of other proceeding except as necessary in connection with a claim of breach of this Agreement, for any effort to enforce this Agreement, or to show that the Parties are bound to this Agreement for the purposes of showing claim preclusion, issue preclusion, collateral estoppel, or *res judicata*.

B. Definitions.

1. "Class Counsel" means Marc Cote and Jillian Cutler of Frank Freed Subit & Thomas LLP.
2. "Effective Date" means the date that is 3 days after the Final Approval Order is entered if there were no objections to the settlement. If there were any objections to the settlement, "Effective Date" means the date that is the later of: (1) 31 days following the Superior Court's entry of the Final Approval Order, or (2) if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals, resulting in final judicial approval of the Settlement without modification.
3. "Final Approval Order" refers to an order by the Superior Court that grants final approval of the Settlement.
4. "Initial Mailing Date" means the date that the Settlement Administrator first mails the Notice of Settlement approved by the Superior Court to all Settlement Class Members.
5. "Notice" or "Notice of Settlement" means the notice of this Settlement which is attached hereto as Exhibit 1 and which the parties intend to be mailed to Settlement Class

Members following the Superior Court's entry of an order granting preliminary approval of the Settlement.

6. "Objection" means a written objection to the Settlement by a Qualified Class Member that is both filed with the Superior Court and mailed to counsel for the Parties, along with any supporting documentation that the person wishes the Court to consider, no later than thirty (30) days after the Initial Mailing Date.

7. "Objection/Opt-Out Deadline" means thirty (30) days after the Initial Mailing Date.

8. "Qualified Class Members" refers to those Settlement Class Members who do not opt out of the Settlement (i.e., who do not submit a Valid Exclusion Request).

9. "Qualified Subclass Members" refers to those Subclass Members who do not opt out of the Settlement (i.e., who do not submit a Valid Exclusion Request).

10. "Settlement" means the settlement reached by the Parties through the negotiation process described in Section II.C. above, as set forth in this Agreement.

11. "Settlement Administrator" means CPT Group, Inc.

12. "Settlement Class" or "Settlement Class Members" means all current and former hourly paid employees of Defendants who have worked at Defendants' restaurants in Seattle, Washington from December 11, 2015 to February 1, 2019.

13. "Settlement Class Period" means the period from December 11, 2015 through February 1, 2019.

14. "Subclass" or "Subclass Members" means all current and former hourly paid service employees of Defendants who have worked as servers, food runners, bartenders, bussers, or hosts at one of Defendants' restaurants in Seattle, Washington during a time between January 31, 2016 and September 1, 2018 ("Subclass Period") in which the restaurant had a service charge disclosure on menus or itemized receipts that stated either (1) "20% service charge: 100% of these funds are distributed to our team in the form of wages, sales commissions, benefits and revenue share" or (2) "20% Service Charge Added. 100% of these funds are distributed to our team."

15. "Subclass Period" means the period from January 31, 2016 through September 1, 2018.

16. "Superior Court" means King County Superior Court.

17. "Valid Exclusion Request" means a request by a Settlement Class Member to opt out of the Settlement that meets the following criteria: (i) is in writing; (ii) states that individual's current address; (iii) contains the following statement: "I request that I be excluded

from the Settlement Class in the case of *Thomas v. Tom Douglas Seattle Kitchen, Inc. et al.*"; (iv) is signed; and (v) is mailed to Class Counsel at the address provided in the Notice and postmarked within thirty (30) calendar days after the Initial Mailing Date.

C. Release. As of the Effective Date, the Settlement and this Agreement will constitute a full and final settlement and release of all "Qualified Class Member Released Claims." "Qualified Class Member Released Claims" means all claims relating to rest breaks, meal periods, and any related claims for unpaid wages or overtime for missed rest or meal breaks, as well as any attendant claims for enhancements, penalties, attorneys' fees and/or costs, which were or could have been asserted based on the facts alleged in this lawsuit on behalf of the Settlement Class and which arose on or before February 1, 2019, whether premised on an express or implied cause of action under any federal, state, or local statutory or regulatory provision, an express or implied agreement, or otherwise. As of the Effective Date, the Settlement and this Agreement will also constitute a full and final settlement and release of all "Qualified Subclass Member Released Claims." "Qualified Subclass Member Released Claims" means all claims relating to the payment or distribution of service charges or service charge disclosures, as well as any attendant claims for enhancements, penalties, attorneys' fees and/or costs, which were or could have been asserted based on the facts alleged in this lawsuit on behalf of the Subclass and which arose on or before September 30, 2018, whether premised on an express or implied cause of action under any federal, state, or local statutory or regulatory provision, tort or common law, equity (e.g., unjust enrichment), or otherwise. For the avoidance of doubt, the foregoing releases include a release of claims against Defendants, and any other individual, person, or entity that could potentially be held liable for the matters released herein, including but not limited to the following entities: Pacific Trends, Inc.; 5<sup>th</sup> & Lenora, Inc.; Tablewine, Inc.; Tomcats, Inc.; Seatown, Inc.; Westlake & Harrison, Inc.; Breadhouse, Inc.; Martians, Inc.; Serious Pie Pike, Inc.; 9<sup>th</sup> & Pine, Inc.; Rotofish, Inc.; and Serious Pie, Inc. The Qualified Class Members further covenant not to sue Defendants or any party released in this Paragraph on any Qualified Class Member Released Claim or Qualified Subclass Member Released Claim.

D. Conditions Precedent. This Agreement and Settlement will become final and effective upon the occurrence of the following events:

1. The Court enters an order granting preliminary approval of the Settlement;
2. The Court enters a Final Approval Order; and
3. The Effective Date occurs.

In the event the Agreement is not given preliminary or final approval, or if the Court's Final Approval Order is reversed on appeal, the Agreement shall become null and void, except that the Parties agree to work together in good faith to resolve any obstacles to Final Approval. If this Agreement becomes null and void because the Court does not approve the Settlement, the Parties shall proceed in all respects as if this Agreement had not been executed. Defendants shall be free

to assert any defenses available to them, including but not limited to, denying the suitability of this case for class treatment.

E. Settlement Consideration.

1. Agreed Monetary Relief. Defendants agree to pay a total of **\$2,400,000.00** (the "Settlement Amount") for a common fund settlement of this lawsuit. The Settlement Amount shall be used to satisfy all of the following: (1) the settlement awards to be paid to Qualified Class Members and Qualified Subclass Members (hereafter, the "Settlement Awards"), (2) all employee-side (but not employer-side) payroll taxes and withholdings associated with the Settlement Awards, (3) the service award to be paid to the named Plaintiff (hereafter, the "Service Award"), (4) the award of attorneys' fees to Class Counsel (hereafter, the "Attorneys' Fees Award"), (5) the expenses and costs of litigation to be paid to Class Counsel (hereafter, the "Cost Payment"), and (6) an award of settlement administration expenses (hereafter, the "Settlement Administration Expenses Award"), all as approved by the Superior Court.

2. Agreed Non-Monetary Relief. Defendants agree to provide the following additional relief to the Settlement Class:

- a. Defendants also agree to provide each Qualified Class Member a \$200 gift card that can be used at any Tom Douglas restaurant for up to a year after its date of issue.
- b. Defendants will create and maintain a confidential employee hotline before the Effective Date so that workers can report any workplace concerns.
- c. Defendants will provide employment law training for all supervisory employees no later than 90 days following the Effective Date, which shall include training regarding meal periods, rest breaks, and the payment of proper wages for all hours worked.

F. Distribution of the Settlement Amount. As part of the motion for final approval, Class Counsel will submit an application for an Attorneys' Fee Award of 25% of the Settlement Amount (\$600,000), an application for a Costs Payment not to exceed \$6,000.00, an application for a Settlement Administration Expenses Award not to exceed \$22,000, and an application for a Service Award of \$15,000.00 for Plaintiff. The amounts approved by the Court will be deducted from the Settlement Amount, and the remainder after these deductions (the "Net Settlement Fund") shall be available to fund Settlement Awards to Qualified Class Members and Qualified Subclass Members.

If the Court approves the payments in each category described above, the Net Settlement Fund will be no less than \$1,752,500.00, calculated as follows:

<b>\$2,400,000</b>	<b>Settlement Amount</b>
<b>-\$600,000</b>	<b>Attorneys' Fee Award (25%)</b>
<b>-\$6,000</b>	<b>Costs Payment</b>
<b>-\$22,000</b>	<b>Settlement Administration Expenses Award</b>
<b><u>-\$15,000</u></b>	<b>Service Award</b>
<b>\$1,757,000</b>	<b>Estimated Net Settlement Fund</b>

G. Calculation of Settlement Awards.

1. Subject to approval by the Superior Court, the calculations of gross (pre-tax and withholding) estimated Settlement Awards will be made by Class Counsel based on data submitted to Class Counsel by Defendants, which data are presumed to be accurate. Upon request from Class Counsel or the Settlement Administrator, Defendants will provide Settlement Class Member data as reasonably necessary to complete settlement administration duties under this Agreement.

2. Final gross Settlement Awards will be calculated by the Settlement Administrator after the Objection/Opt-Out Deadline to determine the appropriate award for each Qualified Class Member and Qualified Subclass Member. The Settlement Administrator shall provide Class Counsel and Defendants' counsel with an electronic report setting forth the results of these calculations. Class Counsel and Defendants' counsel shall have the opportunity after receiving this electronic report to review the gross Settlement Award calculations for compliance with the terms of this Agreement and to submit any concerns in writing to the Settlement Administrator. Thereafter, the Parties shall confer within five (5) business days in an attempt to resolve any disputes relating to the calculations of the gross amounts of Settlement Awards. If the Parties are unable to resolve any disputes about calculating the gross Settlement Awards pursuant to this Agreement, they shall submit their respective positions in writing to a mutually agreed-upon arbitrator, who shall make the final decision regarding any disputed calculations of any Settlement Awards.

3. Distribution of the Net Settlement Fund. Payments to Qualified Class Members and Qualified Subclass Members will be based on the following calculations: Based on the relative amount of damages for each claim, 70 percent of the Net Settlement Fund ("Subclass Portion") will be allocated to the claims involving service charges and will be distributed to the Qualified Subclass Members. The remaining 30 percent of the Net Settlement Fund ("Class Portion") will be allocated to all other claims and will be distributed to the Qualified Class Members.

- a. Each Qualified Class Member's gross share of the Class Portion of the Net Settlement Fund will be a proportional amount based on the sum of

the Qualified Class Member's hours worked for Defendants during the Settlement Class Period in relation to all hours worked by all Qualified Class Members during the Settlement Class Period. The method for calculating the individual gross award amounts from the Class Portion shall be as follows: The total number of Qualified Class Member hours worked during the Settlement Class Period will be the denominator, and each Qualified Class Member's individual number of hours worked during the Settlement Class Period will be the numerator. The resulting percentage will be multiplied by the Class Portion of the Net Settlement Fund amount to arrive at the Qualified Class Member's individual gross award amount from the Class Portion.

- b. Each Qualified Subclass Member's gross share of the Subclass Portion of the Net Settlement Fund will be a proportional amount based on the following: Each Qualified Subclass Member's gross share of the Subclass Portion will be a proportional amount based on the sum of the Qualified Subclass Member's commissions and revenue share received during the Subclass Period. The method for calculating the individual gross award amounts from the Subclass Portion shall be as follows: The total gross amount of commissions and revenue share Defendants paid Subclass Members during the Subclass Period will be the denominator, and each Qualified Subclass Member's individual gross amount of commissions and revenue share received during the Subclass Period will be the numerator. The resulting percentage will be multiplied by the Subclass Portion to arrive at the Qualified Subclass Member's individual gross award amount from the Subclass Portion.
- c. Each Qualified Class Member's gross Settlement Award will be the sum of the Qualified Class Member's individual gross award amount from the Class Portion and individual gross award amount from the Subclass Portion (if any). Thus, Qualified Subclass Members will receive payments from both the Class Portion and the Subclass Portion.

4. Allocation of Settlement Awards Between Wages and Non-Wages. Fifty Percent (50%) of each Qualified Class Member's Settlement Award (both the individual award amount from the Class Portion and individual award amount from the Subclass Portion (if any)) will be allocated to wage claims, and the other fifty percent (50%) of each Qualified Class Member's Settlement Award will be treated as non-wages (prejudgment interest and exemplary damages).

5. Defendants' Payment and Settlement Administrator's Creation of Qualified Settlement Fund. No later than three (3) days after the Effective Date, Defendants shall fully fund the settlement by paying the sum of \$2,400,000.00, plus an additional amount equal to Defendants' employer-side payroll taxes due on the wage portion of the Net Settlement Fund, to the Settlement Administrator. Defendants will also provide \$200 gift cards for each Qualified Class Member to the Settlement Administrator for distribution by that same date. The Settlement Administrator shall establish and maintain a "Qualified Settlement Fund" with the Settlement Amount. After the Parties have agreed to each Qualified Class Member's gross Settlement Award from the Net Settlement Fund, the Settlement Administrator will calculate and deduct payroll tax amounts, including income tax withholding and any other required deductions and taxes, from the wage allocation of each such Settlement Award. The Settlement Administrator will be responsible for issuing to the relevant tax authorities all necessary tax withholdings required for the wage portions of each Qualified Class Member's Settlement Award. The Settlement Administrator will also be responsible for reporting all Settlement Award payments and forwarding all payroll taxes, withholdings, and other deducted amounts associated with the wage portions of Settlement Awards to the necessary government entities. The Settlement Administrator shall report the wage portions of Settlement Awards on IRS Forms W-2 and shall report the non-wage portions of Settlement Awards (on which there will be no tax withholding) on IRS Forms 1099 (marked "Other Income").

H. Attorneys' Fees Award and Costs Payment. As part of seeking the Superior Court's final approval of this Settlement, Class Counsel will apply to the Superior Court for attorneys' fees in an amount equal to twenty-five percent (25%) of the Settlement Amount, plus costs of litigation.

I. Service Awards. In addition to a Settlement Awards computed as described above, Class Counsel will request that Plaintiff Clare Thomas be given a Service Award, on which there will be no payroll tax withholdings and for which an IRS Form 1099 (marked "Other Income") shall be issued to the taxing authorities, in the amount of Fifteen Thousand Dollars (\$15,000.00).

J. Settlement Administration.

1. The Settlement Administrator shall be responsible for notice mailings to the Settlement Class; tracing undeliverable mailings; recording and tracking responses to the mailings to the Settlement Class Members; calculating appropriate tax withholdings for the wage portions of the Settlement Awards; issuing and mailing the necessary checks for all Settlement; logging returned checks and making one attempt to obtain an updated address for returned checks; issuing the Service Award payment, the Attorneys' Fees Award payment, the Costs Payment, and the Settlement Administration Expenses Award payment; issuing all required tax documents to Qualified Class Members (such as Forms W-2s and 1099s); performing all related tax reporting to taxing authorities; tracking and responding to any inquiries made by Settlement Class Members; and any other related tasks mutually agreed to by the Parties.



2. Within ten (10) days after the Objection/Opt-Out Deadline, Class Counsel shall provide the Settlement Administrator and Defendants an electronic report setting forth the names and identities of any Settlement Class Members who submitted a Valid Exclusion Request in conformity with this Agreement.

3. As part of seeking the Superior Court's final approval of this Settlement, Class Counsel will apply to the Superior Court for approval of the Settlement Administration Expenses Award. The costs, fees and expenses incurred by the Settlement Administrator in administering this Settlement shall be paid from the Settlement Administration Expenses Award approved by the Court, which shall not exceed \$22,000.

K. Notice/Approval of Settlement Agreement. The Parties agree to the following procedures for obtaining preliminary Superior Court approval of the Settlement, certifying the Settlement Class, notifying the Settlement Class Members, obtaining final Superior Court approval of the Settlement, and implementing payment of Settlement Awards to Qualified Class Members:

1. Plaintiff shall file a motion with the Superior Court to obtain preliminary approval of the Settlement in conformity with this Agreement.

2. For purposes of this Settlement, Plaintiff will ask the Superior Court to enter an order (the "Preliminary Approval Order") certifying the Settlement Class and Subclass, finding Plaintiff to be an adequate and typical class representative for the Settlement Class and Subclass for purposes of settlement, certifying Plaintiff's attorneys as Class Counsel for the Settlement Class and Subclass, preliminarily approving the Settlement and this Agreement, approving the form of the Notice and its mailing to the Settlement Class and Subclass, and setting a date for a Final Fairness Hearing to determine whether the Court will grant final approval of the Settlement and this Agreement. For purposes of this Settlement only, Defendants agree that Plaintiff satisfies the elements of Rule 23 for certification of the Settlement Class and Subclass. Specifically, Defendants agree for purposes of this Settlement only that the Settlement Class and Subclass are both sufficiently numerous, that Plaintiff is an adequate and typical class representative, that the case presents common issues of law and fact, that common issues predominate over any individualized issues, that Plaintiff's attorneys are adequate Class Counsel, that the Notice is appropriate to inform the Settlement Class Members of their rights, and that preliminary and final approval of the Settlement are appropriate.

3. Defendants will cooperate with Class Counsel and the Settlement Administrator to provide current or last known contact information for all Settlement Class Members for notice purposes as provided in Section III.G.1. above and will make reasonable efforts regarding information in Defendants' possession to assist Class Counsel or the Settlement Administrator in finding addresses for those Settlement Class Members whose last known addresses are incorrect or no longer valid. Class Counsel and Defendants will provide the

Settlement Administrator with any updated address information obtained for Qualified Class Members, which the Settlement Administrator will use when issuing settlement checks for Qualified Class Members.

4. Subject to the Superior Court's approval, the Notice shall be provided using the following procedures:

- a. Within ten (10) days of the date the Superior Court issues the Preliminary Approval Order, the Settlement Administrator shall mail the Notice to all Settlement Class Members ("Initial Mailing Date") in the form attached as Exhibit 1 hereto, and shall provide Defendants' counsel and Class Counsel with a copy of the mail-merge spreadsheet used for the Notice mailings, which will include the estimated settlement award for each Settlement Class Member. On the same day, the Settlement Administrator shall email the Notice to all Settlement Class Members for whom Defendants have provided an email address.
- b. The Notice shall provide that Settlement Class Members who do not opt out and who wish to object to the Settlement must file with the Court and submit to Class Counsel and Defendants' counsel a written statement objecting to the Settlement on or before the Objection/Opt-Out Deadline ("Objection"). If a person wishes to have the Court consider the written statement objecting to the Settlement, the person (i) must not exclude himself or herself from the Settlement Class and (ii) must file with the Court and mail to counsel for the Parties the written Objection, along with any supporting documentation that the person wishes the Court to consider, by no later than thirty (30) days after the Initial Notice Date. If such Objection is submitted and overruled by the Court, the objecting member of the Settlement Class shall remain fully bound by the terms of the Settlement, including the release of all Qualified Class Member Released Claims and all Qualified Subclass Member Released Claims, so long as the Settlement is granted final approval by the Court. The Parties shall submit any responses to objections no later than forty-four (44) days after the Initial Mailing Date. Any Settlement Class Member who does not appear individually or through counsel and who does not challenge or comment upon the fairness and adequacy of the Settlement or Class Counsel's request for attorneys' fees and costs shall waive and forfeit any and all rights to appear separately or object. All Qualified Class Members and Qualified

Subclass Members shall be bound by the Settlement and by all orders and judgments in this Action.

- c. The Notice shall also provide that Settlement Class Members who wish to exclude themselves (*i.e.*, opt out) from the Settlement Class must mail a letter to Class Counsel requesting exclusion from the Settlement Class on or before the Objection/Opt-Out Deadline. An exclusion request must: (i) be in writing; (ii) state that individual's current address; (iii) contain the following statement: "I request that I be excluded from the Settlement Class in the case of *Thomas v. Tom Douglas Seattle Kitchen, Inc. et al.*"; (iv) be signed; and (v) be mailed to Class Counsel at the address provided in the Notice and postmarked within thirty (30) calendar days after the Initial Mailing Date. Each individual who properly files a timely written request for exclusion shall be excluded from the Settlement Class and shall have no rights under the Settlement Agreement. Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Opt-Out Deadline shall be bound by all terms of the Settlement and any final judgment entered in this Case if the Settlement is approved by the Superior Court, regardless of whether they have objected to the Settlement. An exclusion request shall be deemed timely if it is postmarked no later than thirty (30) calendar days after the Initial Mailing Date.
- d. Any supplemental correspondence or other written communications to Settlement Class Members concerning the Notice, the exclusion process, and/or other aspects of settlement administration shall be coordinated in advance between and agreed to by Class Counsel and Defendants' counsel. Notwithstanding the foregoing, Class Counsel may answer email or phone inquiries about the Settlement from individual Settlement Class Members without advance coordination with Defendants' counsel. Likewise, Defendants can communicate with individual Settlement Class Members without advance coordination with Class Counsel for purposes of referring them to Class Counsel or answering non-substantive, non-legal questions regarding the Settlement or Notice. All responses either Party provides will be consistent with the terms of this Agreement and the Notice.

5. The Parties agree that neither they nor their counsel will solicit or otherwise encourage any of the Settlement Class Members to opt out or object to the Settlement.

6. Should any Notice be returned as undeliverable, the Settlement Administrator shall attempt one trace to locate a good address and, if located, shall make a second attempt at mailing the Notice. If such Notice is again returned as undeliverable, no further attempts at delivery of the Notice are required to be made. Notwithstanding the foregoing, the Settlement Administrator may mail or email a Notice to a Settlement Class Member at an address or email address obtained by other means if the Settlement Class Member's Notice is returned as undeliverable or upon the Settlement Class Member's request for the same (e.g., if Plaintiff, Defendants, or another Settlement Class Member provides Class Counsel an address or email address for a Settlement Class Member not previously provided by Defendants or obtained through a trace).

7. No later than fourteen (14) calendar days before the Objection/Opt-Out Deadline (or sixteen (16) days after the Initial Mailing Date), Class Counsel shall file a motion requesting that the Court grant final approval of the Settlement. No later than fourteen (14) calendar days after the Objection/Opt-Out Deadline (or forty-four (44) days after the Initial Mailing Date), Class Counsel will file a supplemental memorandum in support of final approval of the Settlement to inform the Court of any Settlement Class Members who have opted out of the Settlement and to respond to any Objections to the Settlement.<sup>1</sup>

8. Subject to the Superior Court's availability and direction and no earlier than twenty-one (21) days after the Objection/Opt-Out Deadline, a Fairness Hearing shall be held for the Superior Court to determine whether to enter a Final Approval Order that grants final approval of the Settlement, including Class Counsel's Attorneys' Fees Award and Costs Payment, the Settlement Administration Expenses Award, and the Service Award to the Named Plaintiff, and to enter judgment dismissing all claims asserted in the Case.

9. After entry of the Final Approval Order, the Superior Court shall have continuing jurisdiction for the purposes of enforcement of the Settlement and addressing settlement administration matters and such post-judgment matters as may be appropriate under court rules.

10. Within three (3) days after receiving Defendants' payment (see Section III.G.5 above), the Settlement Administrator shall pay the Attorneys' Fees Award and Costs Payment approved by the Court to Frank Freed Subit & Thomas LLP Trust Account and shall pay

---

<sup>1</sup> If either of these deadlines fall on a weekend or Court holiday, Class Counsel may file the brief on the first following business day.

any Service Award approved by the Court to the Named Plaintiff. These payments will not be subject to any withholdings. Within ten (10) days after receiving Defendants' payment, the Settlement Administrator shall also issue and mail all Settlement Award checks to Qualified Class Members (which shall be issued from the QSF set up by the Settlement Administrator) in mailing envelopes listing the Settlement Administrator's return address.

11. Should any Settlement Award check be returned as undeliverable, the Settlement Administrator shall attempt one trace to locate a good address and, if located, shall make a second attempt at mailing the check. If such check is again returned as undeliverable, no further attempts at delivery of the check are required to be made. Notwithstanding the foregoing, the Settlement Administrator may mail a Settlement Award check to a Qualified Class Member at an address obtained by other means if the Qualified Class Member's Settlement Award check is returned as undeliverable or upon the Qualified Class Member's request for the same. Any Qualified Class Member whose Settlement Award check is returned as undeliverable shall receive his/her Settlement Award from the Settlement Administrator if he/she contacts the Settlement Administrator or Class Counsel and provides a correct mailing address within sixty (60) days after the mailing of the Settlement Award checks.

12. Defendants will receive no reversion from the Settlement Amount. If a Settlement Award check remains uncashed sixty (60) days following issuance of checks to Qualified Class Members ("the First Distribution") without the Qualified Class Member having provided an updated mailing address within the sixty (60) day period, the Settlement Administrator will stop payment on the check, the Qualified Class Member who has not cashed the check will have no interest in the Settlement Award (that is, such Settlement Award will not be the property of the Qualified Class Member), and the funds from the uncashed check will be considered residual funds. In addition, the Settlement Administrator will amend the payments reported to the IRS if any Settlement Award checks are not cashed. Of the residual funds, the Settlement Administrator will maintain a reserve fund of up to \$25,000 to pay any claims for which Defendants did not provide accurate Settlement Class Member data or for any Settlement Class Members were inadvertently left off the initial list produced by Defendants (or for any other purposes agreed by Plaintiff and Defendants to ensure all Qualified Class Members receive appropriate payments). If, after sixty (60) days following the First Distribution, the total amount of residual funds exceeds \$100,000, the Settlement Administrator will redistribute the remaining amount (except for the \$25,000 reserve fund) proportionally (based on the calculations described in Section III.G.3 above) to all Qualified Class Members who cashed their original checks ("the Second Distribution"). The payments made in the Second Distribution will be considered non-wages (interest and exemplary damages), and no taxes will be withheld from these payments. The proceeds of any uncashed checks after thirty (30) days following the Second Distribution (or if there is no Second Distribution and no necessity to use any of the reserve fund to ensure appropriate payments) will

be distributed to *cy pres* beneficiaries FareStart (50%) and the Legal Foundation of Washington (50%).

13. If the Superior Court does not enter an Order preliminarily or finally approving the Settlement, or if the Settlement does not become final for any other reason, this Agreement shall be null and void. In such case, the Parties shall work together in good faith to resolve any obstacles to Court approval. If approval cannot be obtained despite such good faith efforts, the Parties shall proceed in all respects as if this Agreement had not been executed.

L. Miscellaneous Provisions.

1. This Agreement may be amended or modified only by a written instrument signed by counsel for both Parties.

2. This Agreement constitutes the entire Agreement among these Parties. No representations, warranties or inducements have been made to any Party concerning this Agreement, other than the representations, warranties and covenants contained and memorialized in this Agreement and the Notice (Exhibit 1).

3. The Parties and their counsel will cooperate with each other and use their best efforts to implement this Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement this Settlement or this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement or this Agreement, then either Party may seek assistance from the Superior Court to resolve such disagreement.

4. This Agreement shall be binding upon, and shall inure to the benefit of, the successors of the Parties hereto, as previously defined.

5. All terms of this Agreement shall be governed by and interpreted according to the laws of the State of Washington.

6. Plaintiff and Defendants believe this is a fair, reasonable and adequate settlement, and have arrived at this Settlement through arm's-length negotiations, assisted in part by an experienced mediator, and taking into account all relevant factors, present and potential.

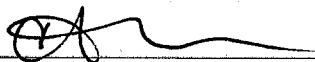
7. Plaintiff and Defendants agree not to disparage or denigrate each other or any one of Defendants' restaurants, products, services, or practices. Notwithstanding this provision, Plaintiff and Defendants may make any truthful statements describing the allegations and defenses asserted in this case and the details of this Settlement.

8. Any documentation containing the names or addresses of Settlement Class Members may be used by Class Counsel and the Settlement Administrator only for purposes of

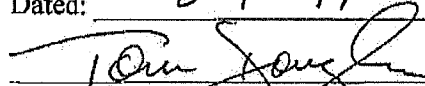
implementing this Agreement. All such information may not be disclosed by Class Counsel or the Settlement Administrator to anyone or any organization, except as expressly set forth herein.

IT IS SO AGREED.


Dated: 8/19/2019

  
Clare Thomas, *Individually and on Behalf of Settlement Class and Subclass*

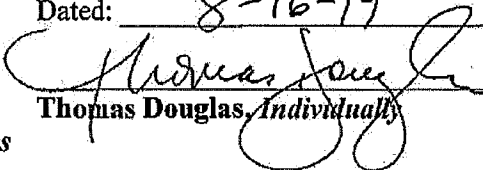
Dated: 8-16-19

  
Tom Douglas, *Seattle Kitchen, Inc. Terry Avenue Restaurant, Inc. Thomas Douglas, as Owner*

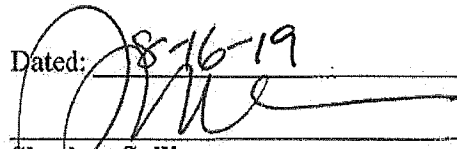
Dated: 8/19/19

  
Marc Cote  
Jillian Cutler  
*Counsel for Named Plaintiff and Class Counsel*

Dated: 8-16-19

  
Thomas Douglas, *Individually*

Dated: 8-16-19

  
Sheehan Sullivan  
Mary Sanden  
*Counsel for Defendants*