

## **SETTLEMENT AND RELEASE AGREEMENT**

### **PARTIES**

This Settlement and Release Agreement (hereinafter "AGREEMENT"), is entered into by and among JESSE GARRETT, an individual (hereinafter referred to as "GARRETT"), and TAVISTOCK RESTAURANTS LLC, a Delaware limited liability company (hereinafter referred to as "TAVISTOCK"). All of the above-noted parties shall be referred to collectively as the "SETTLING PARTIES."

### **RECITALS**

1. GARRETT alleges that he visited TAVISTOCK's restaurant, Napa Valley Grille, located at 1100 Glendon Ave., Ste 100, Los Angeles, CA 90024 ("RESTAURANT"), and alleges that he documented violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Cal. Health & Safety Code §25249.5 *et seq.* (hereinafter referred to as "PROPOSITION 65"). Specifically GARRETT alleges that TAVISTOCK sells alcohol to its customers without first giving clear and reasonable warning to them as required by PROPOSITION 65. TAVISTOCK denies these allegations and asserts that at all times it has and continues to have a Proposition 65 warning that gives clear and reasonable warnings to customers who purchase alcohol at the TAVISTOCK.
2. GARRETT sent a 60-Day Notice of Violation to TAVISTOCK regarding the alleged violations under PROPOSITION 65 on January 30, 2013 (hereinafter referred to as "NOTICE").
3. The SETTLING PARTIES wish to settle these remaining and all other disputes between them.

### **SETTLEMENTS**

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, the SETTLING PARTIES agree as follows:

4. TAVISTOCK agrees to make a voluntary payment in the total amount of six thousand five hundred dollars (\$6,500 USD), five hundred dollars (\$500 USD) for civil penalties and six thousand dollars (\$6,000) for attorney's fees, by check,

cashier's check, or money order made payable to the Law Offices of Miguel A. Custodio, Jr. Payment is to be made by May 10, 2013 and delivered to The Law Offices of Miguel A. Custodio, Jr., 766 E. Colorado Blvd., Suite 108, Pasadena, CA 91101.

5. TAVISTOCK warrants that a Proposition 65 warning that gives clear and reasonable warnings to customers who purchase alcohol is posted at the RESTAURANT and will not be removed.

6. GARRETT's attorneys will report the settlement to the California Attorney General's office as required by PROPOSITION 65. Upon completion of the report, GARRETT's attorneys will print a copy and forward to TAVISTOCK's attorneys.

7. Within twelve (12) months of the execution of this AGREEMENT, TAVISTOCK may request in writing that GARRETT's attorneys draft and file a complaint incorporating the terms of this AGREEMENT into a proposed consent judgment, and seek the court approval of the consent judgment pursuant to Health & Safety Code § 25249.7. The written request will be delivered to the Law Offices of Miguel A. Custodio, Jr., at the address listed in Paragraph 4 of this AGREEMENT. If requested, GARRETT and his attorneys agree to reasonably cooperate with TAVISTOCK and to use their best efforts to support the entry of the terms of this AGREEMENT as a consent judgment by a superior court in California in a timely manner.

If so requested by TAVISTOCK in writing, pursuant to Code of Civil Procedure §§ 1021 and 1021.5, then TAVISTOCK will pay GARRETT and his counsel \$2,500 for attorney's fees incurred drafting and filing the complaint, converting this AGREEMENT into a proposed consent judgment, and seeking judicial approval of the settlement. TAVISTOCK will also pay all court costs incurred in the process. Said court costs shall be paid in advance of the filing of the complaint. TAVISTOCK shall remit payment for attorney's fees to the Law Offices of Miguel A. Custodio, Jr., at the payment address provided in Paragraph 4 of this AGREEMENT within five (5) business days of receiving an invoice from GARRETT's counsel for work performed under this section.

## **RELEASES**

8. This private, out-of-court settlement is on behalf of Plaintiff GARRETT acting solely in his individual capacity. In order for this settlement to bind other members of the public, a complaint and consent agreement must be filed and approved by a superior court in California, in the manner described in Paragraph 7 of this AGREEMENT.

9. Each of the SETTLING PARTIES hereby forever release and discharge each of the other parties and each and all of their respective heirs, executors, administrators, successors, assigns, partners, affiliated or related entities, directors, officers, agents, employees, servants, representatives, indirectly or on behalf of the corporation, all other persons, firms associations, or corporations connected with each and all of the above, including, but not limited to their insurers and attorneys and from any and all claims, demands, causes of action, liens, damages, loss, costs, attorneys' fees or expenses of any kind or nature whatsoever, known or unknown which any of the parties may now have or may hereafter have against any and all of them by reason of any matter, cause or thing, arises out of or connected to the NOTICE including any and all allegations of violations under PROPOSITION 65 . This Agreement is intended to discharge each of the parties from any liability, known or unknown, present or future, in connection with the claims and disputes embodied in the NOTICE including any and all allegations of violations under PROPOSITION 65 and stated in this Agreement, pursuant to the full performance of the terms and conditions in the manner prescribed herein.

This RELEASE, however, does not relieve any of the SETTLING PARTIES from fulfilling any future obligations they may have under this settlement agreement

### **CONDITIONS**

10. Civil Code Section 1542 Waiver. The SETTLING PARTIES each expressly waives all rights under the provisions of Section 1542 of the Civil Code of the State of California. Section 1542 of the Civil Code of the State of California reads as follows:

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

The parties waive all rights under Section 1542 or any other law or statute of similar effect in any jurisdiction with respect to the released claims. The parties acknowledge that they understand the significance and specifically assume the risk regarding the consequences of such release and such specific waiver of Section 1542. The parties acknowledge and agree that this Agreement releases all claims existing or arises prior to the effective date of this agreement which the parties have or may have against the each other whether such claims are known or unknown and suspected or unsuspected by the parties, who forever waive all inquiries and investigations into any and all such claims.

11. Claims Not Assigned. The SETTLING PARTIES each represent and warrant that he/she/it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or cause of action relating to any matter covered by this Agreement.

12. No Admission of Liability. It is expressly understood and agreed that this Agreement is entered into solely for the purpose of avoiding the expense and inconvenience of further litigation, and that this Agreement is not to be construed as an admission by any of the SETTLING PARTIES of any liability whatsoever.

13. Counsel. Each of the SETTLING PARTIES further acknowledges and represents that she or they have been given an opportunity to consult and be represented by, and have consulted and been represented by, attorneys of his/their own choice in connection with the execution of this Agreement, and have relied upon the advice of such attorneys in executing this Agreement.

14. Construction of Agreement. Each of the SETTLING PARTIES further acknowledges that he/she/it, by and through the attorneys of their choice, has participated in the construction and drafting of this Settlement Agreement and Release and acknowledge that none of the parties participated more than any other with respect to the construction and drafting of this Agreement.

15. Binding on Successors, Affiliates, and Subsidiaries. The provisions of this Agreement shall inure to the benefit of, and shall be binding upon the heirs, executors, administrators, assigns, and successors in interest of each of the undersigned.

16. Integration. This Agreement constitutes an integration of the entire understanding and agreement of the Parties with respect to the subject matter

hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated in this Agreement shall not be binding on any of the SETTLING PARTIES, and each of the SETTLING PARTIES acknowledges that she or they have not relied, in entering into this Agreement, on any representation, warranty, promise, condition not specifically set forth in this Agreement. All prior discussions, negotiations, and writings have been, and are, merged and integrated into, and are superseded by, this Agreement.

17. Assumption of Risk of Differences in Facts. Other than the representations and warranties made herein, each of the SETTLING PARTIES acknowledges that, if the facts with respect to which this Agreement are executed are found hereafter to be different from the facts in that connection now believed by them to be true, each expressly accepts and assumes the risk of such possible differences in facts, and agrees that this Agreement shall be, and shall remain, effective, notwithstanding such differences in facts.

18. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts and via facsimile signatures, each of which, when solely executed, shall be deemed an original, but all of which counterparts shall constitute one and the same instrument.

19. Headings. The headings within this Agreement are for the purpose of reference only, and shall not limit or otherwise affect any of the terms or provisions of this Agreement.

20. Writing Required for Modification. This Agreement may not be modified or amended except by a written agreement signed by all the SETTLING PARTIES.

21. Governing Law. The laws of the State of California shall govern the interpretation of this Agreement, as well as any disputes, controversies, claims, actions, or lawsuits arises out of, or related to this Agreement.

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22. The Release shall be deemed to be effective, and the effective date shall be when this Agreement is formally executed.

Dated: 5-3-13

  
\_\_\_\_\_  
Jesse Garrett

Dated:

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Tavistock Restaurants LLC  
Authorized Officer

APPROVED AS TO CONTENT AND FORM:

  
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Miguel A. Custodio, Jr., Esq.  
Law Offices Miguel A. Custodio, Jr.  
Attorneys for Jesse Garrett

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Steve Joffe, Esq.  
Wilson, Elser, Moskowitz, Edelman &  
Dicker LLP  
Attorneys for Tavistock Restaurants  
LLC

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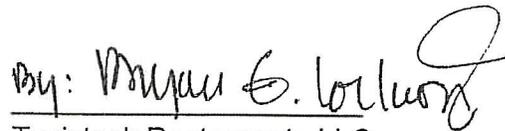
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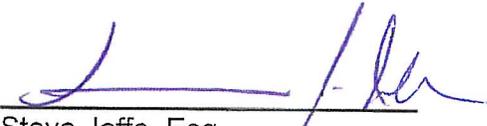
\_\_\_\_\_  
Jesse Garrett

Dated:

By:   
\_\_\_\_\_  
Tavistock Restaurants LLC  
Authorized Officer

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Miguel A. Custodio, Jr., Esq.  
Law Offices Miguel A. Custodio, Jr.  
Attorneys for Jesse Garrett

  
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Steve Joffe, Esq.  
Wilson, Elser, Moskowitz, Edelman &  
Dicker LLP  
Attorneys for Tavistock Restaurants  
LLC