



allegations that Plaintiffs have suffered damage; that Hillstone failed to compensate Plaintiffs in accordance with both California state and federal law; that Hillstone engaged in any unlawful, unfair or fraudulent business practices; that Hillstone engaged in any wrongful conduct as alleged in the Action; or that Plaintiffs were harmed by the conduct alleged in the Action. Neither this Notice, nor any document referred to or contemplated herein, nor any action taken to carry out the Settlement of the Action, is, may be construed as, or may be used as an admission, concession or indication by or against Hillstone of any fault, wrongdoing or liability whatsoever.

Counsel for Named Plaintiff and Plaintiffs (“Class Counsel”) has extensively investigated and researched the facts and circumstances underlying the issues raised in the Action, and the law applicable thereto. As a result of this investigation, Class Counsel continues to assert that Hillstone failed to compensate Plaintiffs in accordance with both state and federal law. However, Class Counsel recognizes the expense and length of continued proceedings necessary to continue the litigation against Hillstone through trial and through any possible appeals. Class Counsel has also taken into account the uncertainty and the risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation.

Class Counsel is also aware of the burdens of proof necessary to establish liability for the Claims, of Hillstone’s defenses thereto, and of the difficulties in establishing damages for Plaintiffs. Class Counsel also has taken into account the extensive settlement negotiations conducted by Named Plaintiff and Hillstone (the “Parties”). Based on the foregoing, Class Counsel believes the proposed Settlement is fair, adequate and reasonable, and in the best interests of Plaintiffs.

Hillstone has also concluded that the further defense of this litigation would be protracted and expensive for all Parties. Hillstone has, therefore, agreed to settle this Action in the manner and upon the terms set forth in the proposed Settlement to put to rest all claims that are or could have been asserted against it in the Action.

For purposes of the Settlement, the Court has certified a Class consisting of all former and current non-exempt employees of Hillstone who were or are employed in the State of California between the dates April 23, 2000 and January 5, 2007. Please be advised that the Court has not ruled on the merits of Plaintiffs’ claims or Hillstone’s defenses.

#### **IV. THE SETTLEMENT**

The following is only a summary of the provisions of the proposed Settlement between Named Plaintiff, Plaintiffs and Hillstone. The specific and complete terms of the proposed Settlement are described in the Stipulation and Settlement Agreement of Class Action Claims (“Settlement Agreement”), a copy of which is available for your review as set forth at the end of this Notice.

The Settlement has a maximum value of \$1,150,000 (the “Settlement Fund”). The Settlement Fund is made up of these parts: (1) the sum of the Gross Settlement Amounts paid from a Payout Fund, (2) a Fees Award to Class Counsel, (3) an Incentive Award to Named Plaintiff, (4) the costs of administration of the Settlement, and (5) reasonable costs of suit up to \$5,000. The Payout Fund is explained in this paragraph. The Fees Award and Incentive Award are explained in Section VI below. As explained above, all former and current non-exempt hourly restaurant employees of Hillstone who were or are employed in the State of California between the dates April 23, 2000 and January 5, 2007 are defined as “Plaintiffs.” All Plaintiffs are receiving this Notice. All Plaintiffs who do not request to be excluded from the Settlement as set forth in Section VIII below will be “Class Members.” As a Class Member, if you wish to participate in the monetary recovery, you must sign and return the enclosed Claim Form/FLSA Consent Form as set forth below in Section V. You will then be a “Settlement Class Member.” Hillstone has agreed to make available to Plaintiffs a maximum of \$765,000 (the “Payout Fund”). Settlement Class Members will receive payment from the Payout Fund based on how long each Settlement Class Member worked for Hillstone during the Class Period. Each Settlement Class Member’s share of the Payout Fund is referred to as that Settlement Class Member’s “Gross Settlement Amount.” Hillstone and Plaintiffs anticipate Gross Settlement Amounts will range from \$3 to \$1558, with the average Gross Settlement Amount being \$114. From each Settlement Class Member’s Gross Settlement Amount, payroll deductions will be made, for state and federal withholding taxes and any other applicable payroll deductions owed by the Settlement Class Member as a result of the payment, resulting in a “Net Settlement Amount.” The Net Settlement Amount that will be paid to each Settlement Class Member is the Settlement Class Member’s “Settlement Award.” The Settlement Awards will be paid within 60 days after the Effective Date.

#### **V. CLAIM PROCEDURE FOR MONETARY RECOVERY/FLSA CONSENT PROCEDURE**

A. The Settlement of this Action includes claims under both California state law and federal law. All Plaintiffs receiving this Notice will be bound by the Settlement as to their state law claims unless they request exclusion as set forth below in Section VIII. However, only Plaintiffs who complete, sign and return the enclosed Claim Form/FLSA Consent Form will become Settlement Class Members and receive payment. Federal law provides that Plaintiffs will not be bound by the Settlement of their federal law claims unless they complete the enclosed Claim Form/FLSA Consent Form. This means that when you complete, sign and

return the Claim Form/FLSA Consent Form, you are doing two things: (1) requesting a monetary award and (2) consenting to join the federal action and to be represented by Named Plaintiff and his counsel. You therefore have three options:

1. If you wish to receive a Settlement Award, you must complete, sign and return the Claim Form/FLSA Consent Form as outlined below in subsection B. This will also indicate your consent to join the federal law FLSA portion of the Action. You will be bound by the Settlement as to both your state and federal claims.

2. If you do not return the Claim Form/FLSA Consent Form or request exclusion, you will be bound by the Settlement as to your state claims but not as to your federal claims, and you will not receive a Settlement Award.

3. If you wish to be excluded from the Settlement, you must follow the procedures outlined below in Section VIII. You will not be bound by the Settlement as to either your state or federal claims.

B. As a Class Member, if you wish to receive a recovery and consent to join the FLSA action, you must complete, sign and return in a proper and timely fashion the Claim Form/FLSA Consent Form to Houston's Class Action Claims Administrator, c/o Desmond, Marcello & Amster ("Claims Administrator"), located at P.O. Box 451999, Los Angeles, CA 90045 via first class U.S. mail or equivalent, postage paid, postmarked on or before March 12, 2007. Any Claim Form/FLSA Consent Form that is not submitted by first class mail or equivalent, is postmarked after the applicable date, is not completely and legibly filled out, is not addressed to the proper address, or is not signed by the Class Member, will not constitute a valid claim and will be denied unless otherwise ordered by the Court.

C. The Claims Administrator shall review each Claim Form/FLSA Consent Form received and shall verify each form to reasonably ensure its validity and accuracy as may be reasonably necessary.

D. Each Class Member who submits a valid Claim Form/FLSA Consent Form shall be paid by check. The checks shall remain valid and negotiable for ninety (90) days from issuance and may thereafter automatically be canceled if not cashed.

## **VI. CLASS COUNSEL'S FEES AWARD, INCENTIVE AWARD, AND CLAIMS ADMINISTRATION EXPENSES**

A. As part of the preliminary approval of the Settlement, the Court has awarded Jose Garay, APLC and The Carter Law Firm (collectively, "Class Counsel") attorneys' fees in a total amount of \$345,000 (the "Fees Award") and reasonable costs of suit not to exceed \$5,000. Class Counsel shall not be permitted to petition the Court for any additional payments for fees, costs or interest and the award shall be for all claims for attorneys' fees and costs past, present and future incurred in the Action. The Fees Award shall be paid out of and deducted from the Settlement Fund but shall not be deducted from the Payout Fund. As part of the Settlement, you will not be required to pay Class Counsel for their representation of you in the Action.

B. Also as part of the preliminary approval of the Settlement, the Court has awarded an Incentive Award to Named Plaintiff in the amount of \$10,000. This Incentive Award shall be paid out of and deducted from the Settlement Fund but shall not be deducted from the Payout Fund. For administrative purposes, the Incentive Award shall be paid in the form of a check from Hillstone or the Claims Administrator.

C. Hillstone will be responsible for making payments to the Claims Administrator in connection with the administration of this Settlement.

## **VII. BINDING EFFECT/RELEASE OF CLAIMS**

### **A. Release of Claims Affecting All Class Members.**

All Class Members, *i.e.*, all Plaintiffs who have not validly requested exclusion, will be bound by the terms of the proposed Settlement with regard to their state law claims if it is approved and if the Final Judgment of the Court dismissing the Action is entered and becomes final. If the proposed Settlement is approved, all Class Members will have released the "Released Parties" from the "Released Claims" as defined below and will be permanently barred from suing or otherwise making a claim against any of the Released Parties that is in any way related to the Released Claims. This is more completely set forth as follows:

As of the Effective Date, the Class Members, including Named Plaintiff, and their successors, assigns, and/or agents, release Hillstone and each of its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, parent companies and attorneys and each of their company-sponsored employee benefit plans and all of their respective

officers, directors, employees, administrators, fiduciaries, trustees, agents, and any individual or entity which could be jointly liable with Hillstone (collectively, the "Released Parties"), from the "Released Claims." For purposes of this Agreement, the "Released Claims" are defined as any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions, or causes of actions that were alleged or that reasonably could have arisen out of the same facts relating to the alleged failure of any of the Released Parties to provide any of the Class Members with compensation as required by federal and/or state law, whether in tort, contract, or for violation of any state or federal constitution, statute, rule or regulation, including state wage and hour laws, whether for economic damages, non-economic damages, restitution, penalties or liquidated damages, arising out of, related to, or in connection with (1) any and all facts, transactions, event, policies, occurrences, acts, disclosures, statements, omissions or failures to act alleged in the Action or that reasonably could have arisen out of the same facts relating to the Action, including claims that the Released Parties failed to provide the Class Members with compensation as required by California law, including but not limited to compensation for wages, overtime, off the clock work, meal periods, rest periods, tools, reimbursement, tips, uniforms, and itemized wage statement penalties as required by California and/or federal law, the failure to pay penalties under federal law and/or the California Labor Code including without limitation §§203, 226.7, and 558, and any other claims whatsoever alleged in the Action, including without limitation all claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, other compensation or benefits including 401(k) benefits or matching benefits, retirement or deferred compensation benefits, attorneys' fees, whether known or unknown, during the period of four (4) years prior to the filing of the Action up to and including the date of preliminary approval of this Settlement, arising from employment with any of the Released Parties (whether based on California state wage and hour law, contract, or otherwise); and/or (2) the causes of action asserted in the Class Action, including but not limited to any and all claims that reasonably could have arisen out of the same facts alleged in the Action for alleged failure to provide the Class Members with compensation as required by California law, and, as related to the foregoing, for alleged unlawful, unfair and/or fraudulent business practices under California Business & Professions Code § 17200, et seq.

The Released Claims include any unknown claims that reasonably could have arisen out of the same facts alleged in the Action that the Class Members do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their settlement with, and release of, the Released Parties or might have affected their decision not to object to this Settlement. With respect to the Released Claims only, the Class Members stipulate and agree that, upon the Effective Date, the Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

The Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, whether in tort, contract, or for violation of any state or federal statute, rule, or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof, without regard to the subsequent discovery or existence of such different or additional facts.

**B. Release Of Claims Affecting Only Class Members Who Return A Claim Form/FLSA Consent Form.**

All Settlement Class Members, *i.e.*, all Plaintiffs who have submitted a valid Claim Form/FLSA Consent Form, will be bound by the terms of the proposed Settlement with regard to their federal law claims in addition to their state law claims if the Settlement is approved and if the Final Judgment of the Court dismissing the Action is entered and becomes final. If the proposed Settlement is approved, all Settlement Class Members will have released the "Released Parties" from the "Released Federal Claims" as defined below and will be permanently barred from suing or otherwise making a claim against any of the Released Parties that is in any way related to the Released Federal Claims. This is more completely set forth as follows:

As of the Effective Date, all Settlement Class Members, including Named Plaintiff, in addition to releasing the Released Parties from the Released Claims as outlined in Paragraph VII A, release the Released Parties from the "Released Federal Claims." For purposes of this Agreement, the "Released Federal Claims" are defined as any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions, or causes of actions which that were alleged in the Action or that reasonably could have arisen out of the same facts alleged in the Action relating to the alleged failure of any of the Released Parties to

provide any of the Class Members with compensation as required by federal law, whether in tort, contract, or for violation of any federal constitution, statute, rule or regulation, including federal wage and hour laws, whether for economic damages, non-economic damages, restitution, penalties or liquidated damages, arising out of, related to, or in connection with: (1) any and all facts, transactions, event, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which were alleged in the Action or that reasonably could have arisen out of the same facts as the Action that the Released Parties failed to provide the Class Members with compensation as required by federal law, including but not limited to compensation for wages, overtime, off the clock work, meal periods, rest periods, tools, reimbursement, tips, uniforms, and itemized wage statement penalties as required by federal law, the failure to pay penalties under federal law including without limitation all claims for restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties, other compensation or benefits including 401(k) benefits or matching benefits, retirement or deferred compensation benefits, attorneys' fees, and any other damages of any kind based on a failure to comply with the federal wage and hour laws alleged in the Action, whether known or unknown, from four (4) years prior to the filing of this Action up to and including the date of preliminary approval of this Settlement, arising from employment with the Released Parties (whether based on federal wage and hour law, contract, or otherwise); and/or (2) the causes of action asserted in the Class Action, including but not limited to any and all claims that were alleged in the Action or that reasonably could have arisen out of the same facts as alleged in the Action for failure to provide the Class Members with compensation as required by federal law, including claims arising from the Fair Labor Standards Act.

The Released Federal Claims include any unknown claims that reasonably could have arisen out of the same facts alleged in the Action that the Settlement Class Members do not know or suspect to exist in their favor at the time of the release, which, if known by them, might have affected their settlement with, and release of, the Released Parties or might have affected their decision not to object to this Settlement. With respect to the Released Federal Claims only, the Settlement Class Members stipulate and agree that, upon the Effective Date, the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

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

The Settlement Class Members may hereafter discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Federal Claims, but upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all of the Released Federal Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, whether in tort, contract, or for violation of any state or federal statute, rule, or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties committed or omitted prior to the execution hereof, without regard to the subsequent discovery or existence of such different or additional facts.

#### **VIII. PROCEDURE FOR EXCLUSION**

Plaintiffs may exclude themselves from the Settlement as to their state law claims by mailing to Houston's Class Action Claims Administrator, c/o Desmond, Marcello & Amster, P.O. box 451999, Los Angeles, CA 90045, on or before March 1, 2007, a written statement expressing their desire to be excluded from the Settlement as to their state law claims in the Corder v. Houston's Restaurants, Inc. litigation. If you wish to request exclusion from the Settlement as to your state law claims in this class action lawsuit, your written statement must include your name (and former names, if any), current address, telephone number, social security number, and the dates of your employment with Hillstone. In addition, it must be postmarked on or before March 1, 2007. Requests for exclusion that do not include all required information, or that are not submitted on a timely basis, will be deemed null, void and ineffective. Persons who are eligible to and do submit valid and timely requests for exclusion from the Settlement as to their state law claims will not receive Settlement Awards, nor will they be bound by the terms of the proposed Settlement as to their state law claims, if it is approved, or the Final Judgment in this Action.

#### **IX. SETTLEMENT HEARING/OBJECTIONS TO THE PROPOSED SETTLEMENT**

A hearing (the "Settlement Hearing") will be held before the Honorable Cormac J. Carney on April 16, 2007, at 1:30 p.m. at the United States District Court for the Central District of California, located at 411 West Fourth Street, Santa Ana, CA 92701 (the "Court"), to determine (1) whether the proposed Settlement of the Action is fair, adequate and reasonable; (2) whether the proposed

settlement of the action should be approved by the Court; and (3) whether the Action should be dismissed on the merits with prejudice. The hearing may be adjourned by the Court from time to time as the Court may without further notice direct.

Any Class Member may appear in person or through counsel at the Settlement Hearing and be heard as to why the proposed Settlement of the Action should not be approved as fair, adequate and reasonable, or why a Final Judgment dismissing the Action against Hillstone with prejudice should or should not be entered. No Class Member, however, shall be heard or entitled to object and no papers or briefs submitted by any such person shall be received or considered by the Court unless written notice of intention to appear at the Settlement Hearing, together with copies of all papers and briefs proposed to be submitted to the Court at the Settlement Hearing, shall have been filed with the Court and have been served personally on or before March 1, 2007, or if by mail then postmarked no later than March 1, 2007, upon all of the following:

Jose R. Garay  
Jose Garay, APLC  
2030 Main Street, Suite 1300  
Irvine, CA 92614

Greg S. Labate  
Matthew M. Sonne  
Sheppard Mullin Richter & Hampton LLP  
650 Town Center Drive, 4th Floor  
Costa Mesa, CA 92626

Roger Carter  
The Law Offices of Roger Carter  
2030 Main Street, Suite 1300  
Irvine, CA 92614

Any Class Member who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement. Any Class Member who is satisfied with the proposed Settlement need not appear at the Settlement Hearing.

**X. EXAMINATION OF PAPERS AND INQUIRIES**

The foregoing is only a summary of the Action and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Stipulation and Settlement Agreement of Class Action Claims, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court for the Central District of California, 411 West Fourth Street, Santa Ana, CA 92701, during regular business hours of each Court day. All inquiries by Plaintiffs regarding this Notice and/or the Settlement should be directed to Class Counsel:

Jose R. Garay  
Jose Garay, APLC  
2030 Main Street, Suite 1300  
Irvine, CA 92614

Roger Carter  
The Law Offices of Roger Carter  
2030 Main Street, Suite 1300  
Irvine, CA 92614

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,  
HILLSTONE, OR HILLSTONE'S ATTORNEYS WITH INQUIRIES.**

Dated: February 9, 2007

---

BY ORDER OF THE COURT  
HON. CORMAC J. CARNEY  
UNITED STATES DISTRICT COURT