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12 **SUPERIOR COURT OF ARIZONA**  
13 **IN MARICOPA COUNTY**

14 STATE OF ARIZONA, *ex rel.* KRISTIN K.  
15 MAYES, Attorney General,

16 Plaintiff,

17 v.

18 FOREGIVENESS AZ, AN ARIZONA  
19 LIMITED LIABILITY COMPANY; ETTA  
20 SCOTTSDALE, A DELAWARE LIMITED  
21 LIABILITY COMPANY AND MAPLE &  
22 ASH SCOTTSDALE, A DELAWARE  
23 LIMITED LIABILITY COMPANY,

24 Defendants.

Case No.:

**CONSENT AGREEMENT OF THE  
PARTIES AND DISMISSAL OF THE  
CASE**

(Assigned to the Hon. [NAME])

25 The State of Arizona, *ex rel.* Kristin K. Mayes, the Attorney General (the “State”), filed a  
26 Complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534  
27 (the “CFA”), and the defendants Foregiveness Az, an Arizona Limited Liability Company; Etta  
28 Scottsdale, a Delaware Limited Liability Company and Maple & Ash Scottsdale, a Delaware  
Limited Liability Company (collectively the “Defendants”) have waived service of the  
Complaint, have been advised of the right to a trial in this matter, and have waived the same.

1 Defendants admit the jurisdiction of this Court over the subject matter and parties and  
2 acknowledge that this Court will retain jurisdiction for the purpose of enforcing this Consent  
3 Agreement of the Parties and Dismissal of the Case. Defendants have consented and stipulated  
4 to entry of this Consent Agreement of the Parties and Dismissal of the Case to compromise and  
5 settle claims in connection with an investigation under the Arizona Consumer Fraud Act and  
6 without any admission of guilt, wrongdoing, violation, or sanction by the Defendants.

7 **PARTIES**

8 1. The State is authorized to bring this action under the CFA.

9 2. Defendant Foregiveness Az is an Arizona Limited Liability Company doing  
10 business as “Maple & Ash”, with its principal place of business located at 7135 E Camelback Rd  
11 #130, Scottsdale, AZ 85251.

12 3. Defendant Etta Scottsdale is a Delaware Limited Liability Company doing business  
13 as “Etta”, with its principal place of business located at 15301 N Scottsdale Rd, Scottsdale, AZ  
14 85254.

15 4. Defendant Maple & Ash Scottsdale is a Delaware Limited Liability Company with  
16 its principal place of business located at 7135 E Camelback Rd #130, Scottsdale, AZ 85251.

17 5. All events, acts and practices described in, and relevant to, this Consent Agreement  
18 of the Parties and Dismissal of the Case took place in Maricopa County, Arizona.

19 6. This Court has jurisdiction over the Complaint and the parties necessary for the  
20 Court to enter this Consent Agreement of the Parties and Dismissal of the Case and any orders  
21 hereafter appropriate pursuant to A.R.S. § 44-1528 and this Consent Agreement of the Parties  
22 and Dismissal of the Case.

23 7. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

24 **BACKGROUND**

25 8. Defendants operate restaurants in Scottsdale Arizona.

26 9. Beginning in 2021, Maple & Ash began to charge consumers an additional 3.5%  
27 to cover employee benefits.

28 10. When Etta opened in 2022, it also charged consumers this amount.

1 11. While this charge appeared on customers' receipts with the label of "EMP  
2 Benefits", the State alleges it was not adequately disclosed on the menus or anywhere else in the  
3 restaurants.

4 12. As detailed in the Complaint filed contemporaneously in this action, the State  
5 alleges that Defendants violated the ACFA by failing to disclose to walk-in consumers the  
6 additional 3.5% "EMP Benefits" charge prior to receiving their bill.

7 13. The parties have engaged in good-faith negotiations to settle the State's claims.  
8 The State, through its counsel, has concluded, after investigation of the facts and after carefully  
9 considering the circumstances of the litigation, including the claims and causes of action asserted  
10 and the possible legal and factual defenses thereto, that it is in the best interests of the State to  
11 enter into this Consent Agreement of the Parties and Dismissal of the Case. Likewise, Defendants  
12 have concluded that it is in Defendants' best interests to enter into this Consent Agreement of the  
13 Parties and Dismissal of the Case, without admitting guilt or wrongdoing, for the purposes of  
14 settlement only and to avoid incurring costs associated with litigation with the State, and the  
15 uncertainty and risk of litigation.

16 **ORDER**

17 NOW, THEREFORE, IT IS ORDERED AND DECREED:

18 **INJUNCTIVE TERMS**

19 14. The injunctive relief set forth in this Consent Agreement of the Parties and  
20 Dismissal of the Case is binding upon any of the following that receive actual notice of this  
21 Consent Agreement of the Parties and Dismissal of the Case through personal service or  
22 otherwise: (a) Defendants and their subsidiaries; (b) their officers, agents, servants, employees,  
23 and attorneys; and (c) those persons in active concert or participation with Defendants or any of  
24 their officers, agents, servants, employees, or attorneys. Pursuant to A.R.S. § 44-1528,  
25 Defendants are permanently enjoined, restrained and prohibited from failing to disclose to any  
26 consumers prior to receiving their bill, the "EMP Benefits" charge or any other additional  
27 surcharges.

28 15. Pursuant to A.R.S. § 44-1528, Defendants, at their Arizona restaurant locations,

1 must:

- 2 a. Disclose on their physical menus the 3.5% “EMP Benefits” charge and other  
3 additional surcharges;
- 4 b. Disclose on their online menus the 3.5% “EMP Benefits” charge and other  
5 additional surcharges; and
- 6 c. Disclose to consumers who make a reservation, online or otherwise, the 3.5%  
7 “EMP Benefits” charge and other additional surcharges at the time the reservation  
8 is made.

9 **PAYMENT TERMS**

10 16. Prior to the entry of this Consent Agreement of the Parties and Dismissal of the  
11 Case, Defendants shall pay a total of \$20,000.00 to the Arizona Attorney General. The money  
12 will be deposited into the Consumer Protection-Consumer Fraud Revolving Fund pursuant to  
13 A.R.S. § 44-1531.01(C) and used for the purposes set forth therein.

14 17. The payment required herein must be paid in the form of cashier’s checks or money  
15 orders made payable to “The State of Arizona,” or by wire transfer according to instructions  
16 supplied by the State. If paid by cashier’s check or money order, payment must be delivered, or  
17 mailed and postmarked, to:

18 Consumer Protection and Advocacy Section  
19 The Office of the Arizona Attorney General  
20 2005 North Central Avenue  
Phoenix, Arizona 85004-1592

21 **BANKRUPTCY NOTICE PROVISIONS**

22 18. Defendants warrant and represent that there is not any pending case, proceeding,  
23 or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or  
24 recomposition of Defendants or their debts under any law relating to bankruptcy, insolvency,  
25 reorganization, or the relief of debtors, or seeking the appointment of a receiver, trustee,  
26 custodian, or other similar official for Defendants. Defendants further warrant and represent that  
27 they will not file, or cause to be filed, any such case, proceeding, or other action prior to 91 days  
28 after complete payment of all amounts due under this Consent Agreement of the Parties and

1 Dismissal of the Case. If Defendants do file or cause to be filed such a case, proceeding, or other  
2 action prior to the expiration of that time, then the State will have the right, at its sole discretion,  
3 to treat that as a material breach of this Consent Agreement of the Parties and Dismissal of the  
4 Case, reopen proceedings, and proceed with this case as though this Consent Agreement of the  
5 Parties and Dismissal of the Case had not been entered, provided that Defendants will be entitled  
6 to an offset for any amount Defendants already paid to the State under this Consent Agreement  
7 of the Parties and Dismissal of the Case.

### 8 **MATERIAL BREACH**

9 19. In the event of a material breach of this Consent Agreement of the Parties and  
10 Dismissal of the Case, in addition to all other remedies available under Arizona law and the  
11 penalties specifically provided under A.R.S. § 44-1532, the State may, in its sole discretion,  
12 reopen proceedings and continue with this case as though this Consent Agreement of the Parties  
13 and Dismissal of the Case had not been entered, provided that Defendants will be entitled to an  
14 offset for any amount actually paid to the State.

### 15 **RELEASE**

16 20. The parties acknowledge by the execution hereof that this Consent Agreement of  
17 the Parties and Dismissal of the Case constitutes a complete settlement of the allegations  
18 contained in this Consent Agreement of the Parties and Dismissal of the Case, and the State  
19 agrees not to institute any civil action against the Defendants or their employees or agents for the  
20 violations of the ACFA described herein. Notwithstanding the foregoing, the State may institute  
21 an action or proceeding to enforce the terms and provisions of this Consent Agreement of the  
22 Parties and Dismissal of the Case, take action based on future conduct by Defendants, take action  
23 based on past conduct not specified in this Consent Agreement of the Parties and Dismissal of  
24 the Case, and/or institute an action or proceeding to prevent the discharge of any debt acquired  
25 through this Consent Agreement of the Parties and Dismissal of the Case.

### 26 **GENERAL PROVISIONS**

27 21. Nothing in this Consent Agreement of the Parties and Dismissal of the Case will  
28 be construed as an approval by the Attorney General, the Court, the State of Arizona, or any

1 agency thereof of Defendants' past, present, or future conduct. Defendants must not represent or  
2 imply that the Attorney General, the Court, the State of Arizona, or any agency thereof has  
3 approved or approves of any of Defendants' actions or any of Defendants' past, present or future  
4 business practices.

5 22. This Consent Agreement of the Parties and Dismissal of the Case represents the  
6 entire agreement between the parties, and there are no representations, agreements, arrangements,  
7 or understandings, oral or written, between the parties relating to the subject matter of this  
8 Consent Agreement of the Parties and Dismissal of the Case which are not fully expressed herein  
9 or attached hereto.

10 23. If any portion of this Consent Agreement of the Parties and Dismissal of the Case  
11 is held invalid by operation of law, the remaining terms thereof will not be affected and will  
12 remain in full force and effect.

13 24. Jurisdiction is retained by this Court for the purpose of entertaining an application  
14 by the State for the enforcement of this Consent Agreement of the Parties and Dismissal of the  
15 Case.

16 25. This Consent Agreement of the Parties and Dismissal of the Case is the result of a  
17 compromise between the parties. Only the State may seek enforcement of this Consent  
18 Agreement of the Parties and Dismissal of the Case. Nothing herein is intended to create a private  
19 right of action by other parties.

20 26. This Consent Agreement of the Parties and Dismissal of the Case does not limit the  
21 rights of any individual private party to pursue any remedies allowed by law.

22 27. The effective date of this Consent Agreement of the Parties and Dismissal of the  
23 Case is the date that it is entered by the Court.

24 28. This Consent Agreement of the Parties and Dismissal of the Case may be executed  
25 by the parties in counterparts and be delivered by facsimile or electronic transmission, or a copy  
26 thereof, such constituting an original counterpart hereof, all of which together will constitute one  
27 and the same document.

28 29. This Consent Agreement of the Parties and Dismissal of the Case resolves all

1 outstanding claims expressly identified in the Complaint as to Defendants. As no further matters  
2 remain pending, this is a final judgment entered pursuant to Ariz. R. Civ. P. 54(c).

3 DATED this \_\_\_\_\_ day of April, 2023.

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7 JUDGE OF THE SUPERIOR COURT  
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1 **CONSENT AGREEMENT**

2 1. Defendants acknowledge that they have waived service of the Summons and  
3 Complaint, have read the Findings of Fact, Conclusions of Law and Order, and are aware of their  
4 right to a trial in this matter and have waived the same.

5 2. Defendants admit the jurisdiction of this Court, and consent to the entry of the  
6 foregoing Order.

7 3. Defendants state that no promise of any kind or nature whatsoever was made to  
8 induce them to enter into this Consent Agreement of the Parties and Dismissal of the Case and  
9 declare that they have entered into this Consent Agreement of the Parties and Dismissal of the  
10 Case voluntarily.

11 4. This Consent Agreement of the Parties and Dismissal of the Case is entered as a  
12 result of a compromise between the parties. Only the State may seek enforcement of this Consent  
13 Agreement of the Parties and Dismissal of the Case. Nothing herein is intended to create a private  
14 right of action by other parties; however, this Consent Agreement of the Parties and Dismissal of  
15 the Case does not limit the rights of any private party to pursue any remedies allowed by law.

16 5. Defendants acknowledge that their acceptance of this Consent Agreement of the  
17 Parties and Dismissal of the Case is for the purpose of settling the ongoing consumer fraud  
18 lawsuit filed by the State, and further acknowledge that this Consent Agreement of the Parties  
19 and Dismissal of the Case does not preclude any agency or officer of this State or subdivision  
20 thereof from instituting other civil or criminal proceedings as may be appropriate.

21 6. This Consent to Judgment may be executed in counterparts and be delivered by  
22 facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart  
23 hereof, all of which together will constitute one and the same document.

24 7. Defendants represent and warrant that the person signing below on their behalf of  
25 each entity is duly appointed and authorized to do so.

26 DATED this \_\_\_\_ day of April, 2023.



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FOREGIVENESS AZ, AN ARIZONA  
LIMITED LIABILITY COMPANY;

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ETTA SCOTTSDALE, A DELAWARE  
LIMITED LIABILITY COMPANY

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

MAPLE & ASH SCOTTSDALE, A  
DELAWARE LIMITED LIABILITY  
COMPANY,

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

1 **APPROVED AS TO FORM AND CONTENT:**

2 **KRISTIN K. MAYES**

3 **Attorney General**

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

7 Joseph Hubble

8 Assistant Attorney General

9 Attorneys for the State of Arizona

10 [Document Number]

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