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Case No. 2019-0702-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANTHONY AQUILA, an individual, Plaintiff, v. SOLERA GLOBAL HOLDING CORP., a Delaware corporation, SOLERA HOLDINGS, INC., a Delaware corporation, and DOES 1 through 50, inclusive, Defendants.	C.A. No.

VERIFIED COMPLAINT FOR SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF REGARDING ANTHONY AQUILA'S RIGHT TO EXERCISE VESTED OPTIONS

Plaintiff ANTHONY AQUILA (hereinafter "Aquila" or "Plaintiff"), an individual, alleges against Defendants SOLERA GLOBAL HOLDING CORP. ("Solera Global"), a Delaware corporation, and SOLERA HOLDINGS, INC. ("Solera Holdings"), a Delaware corporation ("Solera Global" and "Solera Holdings" hereinafter collectively referred to as "Solera"), and DOES 1 through 50, inclusive, as follows:

INTRODUCTION

1. Aquila is the founder of Solera, an American company which provides risk management and asset protection software and services to the automotive and

property insurance industry. Solera is an international company doing business in 88 countries across six continents. Aquila was the impetus behind Solera's vision, growth, and success.

2. After dedicating years of service as the Founder, Chairman, President and Chief Executive Officer of Solera in building Solera into the global company it is today, Aquila ended his employment with Solera to seek new challenges. As part of Aquila's departure, the parties entered into a Separation and Release Agreement ("Separation Agreement"). The Separation Agreement was executed on May 27, 2019. Pursuant to the Separation Agreement, Solera was contractually obligated to pay Aquila specific amounts of money and honor Aquila's right to exercise specific Vested Options relating to Solera's Common Stock, among other things.

3. Unbeknownst to Aquila at the time he executed the Separation Agreement, Solera never had any intention of performing its obligations under the Separation Agreement, namely, its obligation to honor Aquila's right to exercise his Vested Options of Solera's Common Stock. Instead, Solera manufactured an argument that Aquila violated a "No-Hire" Provision contained in the Confidentiality, Invention Assignment, Non-Solicit, Non-Compete and Arbitration Agreement ("Restrictive Covenant Agreement"). Specifically, for approximately two years prior to Aquila's departure from Solera, Adventure Motors LLC ("Adventure"), a company owned by Aquila, hired Guy Dibble ("Dibble") to work on classic cars as a mechanic. In fact, Adventure paid Solera for Dibble's time.

Adventure has no employees and has not generated a profit. Yet, despite Solera's *expressed consent* to Dibble working for Adventure, it now contends Dibble's continued employment is somehow a breach of the "No-Hire" Provision. Specifically, Solera claimed Aquila's direct hiring of an auto mechanic for one of Aquila's separately owned companies somehow breached Solera's No-Hire Provision. Consequently, Solera claimed it is relieved of any obligation to honor Aquila's exercise rights of his Vested Options, among other provisions. Solera's argument lacks merit and their failure to honor Aquila's exercise of his Vested Options is improper.

4. Aquila brings this lawsuit against Solera to obtain a Court Order compelling Solera to honor Aquila's exercise of his Vested Options and to enjoin Solera from repurchasing any of Aquila's Vested Options. Aquila does not have any other adequate remedy under the law.

PARTIES

5. Aquila is a resident of Texas and is the founder, and formerly, the Chairman, President and Chief Executive Officer of Solera Global and Solera Holdings, global businesses headquartered in Southlake, Texas.

6. Solera Global is a Delaware Corporation, authorized and licensed to do business in Texas, with its principal place of business in Westlake, Texas. Solera Global's registered agent for the purpose of service in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

7. Solera Holdings is a Delaware Corporation, authorized and licensed to do business in Texas, with its principal place of business in Westlake, Texas. Solera Holdings' registered agent for the purpose of service in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

8. Aquila is unaware of the true names and capacities of those sued herein as Does 1 through 50, inclusive, and will amend this Complaint to allege the true names and capacities of such Doe Defendants when ascertained. Aquila is informed and believes, and on that basis alleges, that each of the fictitiously named Doe Defendants are responsible in some manner for the occurrences alleged in this Complaint.

9. Aquila is informed and believes, and on that basis alleges, that at all times relevant to this Complaint, each of the Defendants is and was the agent, employee, principal, alter ego, partner, joint venture, co-conspirator or representative of the remaining Defendants, and each of them was acting within the course and scope of such relationship, and that each of the Defendants acted with the permission and consent of each other Defendants.

10. Solera and the Doe Defendants are hereinafter collectively referred to in this Complaint as "Solera" or "Defendants".

JURISDICTION AND VENUE

11. This Court has specific jurisdiction over this action based on the contractual agreements signed by the Parties, which are relevant to this dispute.

12. On March 4, 2016, Aquila entered into an employment agreement with Solera ("Employment Agreement"). Concurrent with the execution of the Employment Agreement, Aquila entered into a stock option agreement ("Original Stock Option Agreement") with Solera, which sets forth instructions relating to remedies and the governing law concerning any disputes involving the Original Stock Option Agreement. Attached as **Exhibit 1** is a true and correct copy of the Original Stock Option Agreement.

13. The Original Stock Option Agreement is subject to the terms and conditions of the 2016 Stock Option Plan ("Plan"), a true and correct copy of which is attached as **Exhibit 2**.

14. Paragraph 10 of the Original Stock Option Agreement says the Agreement will be subject to the governing law provisions of the Plan, and paragraph 11 of the Agreement says the parties are entitled to any of the remedies specified in the Plan.

15. Paragraph 18 of the Plan (entitled "Remedies") says, in relevant part, as follows:

> Each Participant and the Company acknowledges and agrees that money damages may not be an adequate remedy for any breach of the provisions of this Plan and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for specific performance and/or other injunctive relief in order to enforce or prevent any violations of the provisions of this Plan.

16. Paragraph 20 of the Plan (entitled "Governing Law") says, in relevant part, as follows:

> All issues concerning the Plan will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision of rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the law of any jurisdiction other than the State of Delaware. Each of the Company and each Participant submits to the co-exclusive jurisdiction of the United States District Court and any Delaware state court sitting in Wilmington, Delaware over any lawsuit under this Plan and waives any objection based on venue or *forum non conveniens* with respect to any action instituted therein.

ATTORNEYS' FEES AND COSTS

17. Under paragraph 18 of the Plan, Aquila is entitled to recover costs (including reasonable attorneys' fees) relating to this action.

GENERAL ALLEGATIONS

18. On March 4, 2016, Aquila entered into the Employment Agreement with Solera, whereby Aquila agreed to serve as Chairman, President and Chief Executive Officer of Summertime Holding Corp., a Delaware corporation (the predecessor to Solera Holdings), and continue serving as Chairman, President and Chief Executive Officer of Solera Holdings. Attached as **Exhibit 3** is a true and correct copy of the "Employment Agreement."

19. As part of the Employment Agreement, Aquila entered into the Restrictive Covenant Agreement with Solera. Section 6.1 of the Restrictive Covenant Agreement, entitled "Non-Solicitation of Employees/Consultants" ("No-Hire Provision" or "Section 6.1") says:

> During your employment with the Group and for a period of eighteen (18) months thereafter, you will not directly or indirectly hire, attempt

> to hire, recruit, offer employment, lure or entice away, or in any other manner persuade or otherwise solicit anyone who is then an employee or consultant of the Group (or who was an employee or consultant of the Group within six months preceding the date of any such prohibited conduct) to resign from the Group or to apply for or accept employment with, or otherwise provide services to, you or any third party, for your own benefit or for the benefit of any other person or entity.

20. Aquila alleges this provision is unenforceable as it (1) violates Texas public policy; (2) is overbroad; (3) imposes a greater restraint than is necessary to protect the goodwill or other business interest of Solera; and (4) is unreasonable as to scope.

21. In or around May 2017, and while still employed with Solera, Aquila's separately owned company, Adventure, a Texas corporation, hired Dibble, a then-employee of a Solera subsidiary, Identifix, Inc. ("Identifix"), a Texas corporation, to work as a mechanic for Adventure.

22. Adventure is not a party to the Restrictive Covenant Agreement or No-Hire Provision. Nor is Adventure a competitor of Solera. Adventure is in the business of buying classic cars and a platform for team building. Neither Solera nor any of its subsidiaries buy or sell cars for profit, much less classic cars. Solera, and its subsidiaries, develop and sell software. Moreover, Adventure is in its third year of operations and has never had an employee before it hired Dibble (who was already working for Adventure in the exact same capacity for approximately two years before this dispute), and has never generated profits. Adventure does not offer repair or restoration services to the general public and has never generated revenue from repair or restoration services. *Adventure has no customers*.

23. While employed with Identifix in his capacity as a mechanic, Dibble never received any specialized training or had access to, received, or otherwise had knowledge of Solera's confidential or proprietary information, intellectual property, or trade secret information. And, equally important, in the last year, Dibble has not worked in any capacity for Adventure or Solera that involves customer service or interaction with any potential or existing customers of Solera.

24. During the time Dibble worked for Adventure and Identifix (*i.e.*, May 2017 to June 2019) ("Joint Employer Period"), Solera consented to Dibble working for both companies at the same time. In fact, Solera ratified and willingly participated in this arrangement. To that end, with full knowledge, authorization and approval of the above-described Dibble-Adventure relationship, Identifix directly submitted invoices to Adventure for the services Dibble provided to Adventure. For example, Dibble would perform work for Adventure; Solera would then prepare an invoice for Dibble's time spent working for Adventure; and then Adventure would pay Solera the amount billed for that time. During the Joint Employer Period, Adventure was billed and paid Solera for Dibble's time.

25. These invoices conclusively confirm Solera's approval of Adventure's employment of Dibble during the Joint Employer Period. Had Solera believed prohibiting Dibble's employment with Adventure was necessary to protect its goodwill or other business interests, Solera would not have agreed to the employment between Dibble and Adventure. The fact that Solera only now objects

to Dibble's employment with Adventure confirms Solera is not truly concerned that its goodwill and business interests would be impacted by the hiring of Dibble, but reveals Solera's true intention – to use Dibble as a pretext to justify breaching the Separation Agreement in a scheme to avoid paying Aquila millions of dollars in separation payments and avoid having to transfer thousands of shares of Solera's Common Stock to Aquila.

26. Even more disturbing is that Dibble's employment with Solera was terminated in or about late June 2019. Following Dibble's termination of employment with Solera, Adventure continued to employ Dibble, including through July 2019. After this termination, Dibble contacted Solera for his job back and Solera did not return his telephone calls, text or emails.

27. On or about May 23, 2019, Aquila ended his employment relationship with Solera. On May 27, 2019, Aquila and Solera executed the Separation Agreement. Attached as **Exhibit 4** is a true and correct copy of the Separation Agreement.

28. Section 2 of the Separation Agreement (entitled "Separation Payment") states:

> Upon the Separation Date, [Aquila] will receive payment for any accrued but unpaid Base Salary. Subject to (i) the occurrence of the Release Effective Date and (ii) [Aquila's] continued compliance with Section 6 of that certain Confidentiality, Invention Assignment, NonSolicit, Non-Compete and Arbitration Agreement, dated March 4, 2016, between [Aquila] and the Company (the "Restrictive Covenant Agreement") (as amended by Section 8 below), [Aquila] shall be entitled to the following payments:

(a) A bonus payment in the amount of [. . .], which represents payment of [Aquila's] Annual Bonus in respect of fiscal year 2019, payable when fiscal year 2019 annual bonuses are paid to other senior executives of the Company, but in no event later than July 15, 2019;

(b) A severance payment in the amount of [. . .], payable in equal installments during the 18 month period following the Separation Date in accordance with the Company's payroll practices, beginning on the first payroll date at least 60 days following the Separation Date (such payroll date, the "Initial Payment Date"), with the first payment including all amounts that otherwise would have been due under the terms of this Agreement had such payments commenced immediately following the Separation Date; and

(c) A payment equal to [. . .], representing 18 times the monthly amount of COBRA premiums as of the Separation Date, payable on the Initial Payment Date, such cash payments to be fully taxable and used in [Aquila]'s sole discretion, and made without regard to whether [Aquila] elects COBRA.

29. Section 3 of the Separation Agreement (entitled "Treatment of Parent Equity; Promissory Note") states:

(a) [Aquila] and [Solera] acknowledge and agree that:

(i) pursuant to that certain Stock Option Agreement, dated March 4, 2016, between [Solera] and [Aquila] ("Original Stock Option Agreement") and the Solera Global Holding Corp. 2016 Stock Option Plan ("Plan"), [Aquila] holds (i) Service Options to purchase up to [. . .] shares of Common Stock of [Solera] ("Common Stock"), [. . .] of which are Vested Options as of the date hereof and (ii) Return Target Options to purchase up to [. . .] shares of Common Stock, none of which are Vested Options as of the date hereof (as any such capitalized terms not defined herein are defined in the Original Stock Option Agreement);

(ii) pursuant to that certain Stock Option Agreement, dated June 28, 2018, between [Solera] and [Aquila] ("Additional Return Target Option Agreement") and the Plan, [Aquila] holds Return Target Options to purchase up to [. . .] shares of Common Stock, none of

which are Vested Options as of the date hereof (as any such capitalized terms not defined herein are defined in the Additional Stock Option Agreement);

(iii) pursuant to that certain Stock Subscription and Rollover Agreement, dated March 3, 2016, between [Solera] and [Aquila] ("Original Subscription Agreement"), [Aquila] owns [. . .] shares of Common Stock, of which [. . .] are Purchased Shares (as defined in the Original Subscription Agreement) and [. . .] are Exchanged Shares (as defined in the Original Subscription Agreement); and

(iv) pursuant to that certain Stock Subscription Agreement, dated March 21, 2017, between [Solera] and [Aquila], [Aquila] owns [. . .] shares of Common Stock, of which [. . .] are treated as Purchased Shares (as defined in the Original Subscription Agreement) and [. . .] are treated as Exchanged Shares (as defined in the Original Subscription Agreement).

(b) [Aquila] hereby acknowledges and agrees that all Service Options that are not Vested Options as of the date of this Agreement and all Return Target Options are forfeited for no consideration as of the Separation Date.

(c) Any Service Options that are Vested Options as of the date hereof may be exercised within the 90 day period immediately following the Separation Date, in accordance with the procedures for exercise set forth in the Original Stock Option Agreement, and such Service Options and any Service Option Shares (as defined in the Original Stock Option Agreement) issued to [Aquila] upon the exercise of Vested Service Options will remain subject to the terms of the Original Stock Option Agreement and the Plan, including with respect to the Repurchase Option. [Solera] acknowledges and agrees that the payment of the exercise price and any taxes required to be withheld in connection with the exercise of Vested Service Options may be accomplished by [Aquila] directing [Solera] to withhold shares of Common Stock having a Fair Market Value equal to the aggregate amount of such exercise price and taxes. [Aquila] agrees and acknowledges that the price per share set forth in Section 3(d) does not constitute Fair Market Value under the Original Stock Option Agreement.

(d) [Solera] agrees to repurchase [. . .] Exchanged Shares ("Purchase Shares") from [Aquila] at a price per share of [. . .] ("Purchase Price"). The completion of the purchase of the Exchanged Shares shall take place at the principal office of [Solera] on the business day following the Release Effective Date (the "Closing Date"). On the Closing Date, [Solera] will deliver to [Aquila] the total Purchase Price by certified check or by wire transfer of immediately available funds (if [Aquila] provides to [Solera] wire transfer instructions). [Aquila] hereby acknowledges, represents and warrants that (i) [Aquila] has good and valid title to and authority to transfer the Purchase Shares free and clear of any liens, charges, restrictions or encumbrances of any kind (other than any liens, charges or encumbrances on the Exchanged Shares pursuant to that certain Amended and Restated Pledge Agreement, dated March 21, 2016, between [Solera] and [Aquila] ("Pledge Agreement")) and (ii) [Aquila] has full right, power and authority to enter into this
Agreement and to consummate the transactions contemplated by this Agreement. Following the date hereof, other than the right to receive the Purchase Price, [Aquila] shall have no rights or claims with respect to the Purchase Shares and, as of the date of this Agreement, [Aquila], on behalf of himself and his heirs, successors and assigns, irrevocably, absolutely and fully release, relieve, relinquish, waive and forever discharge the Company Group (as defined below) from any and all manner of actions, causes of actions, claims, obligations, demands, damages, costs, expenses, compensation or other relief, whether known or unknown, matured or unmatured, whether in law or equity, directly or indirectly arising out of, relating to or by virtue of [Aquila]'s ownership of the Purchase Shares, to the fullest extent permitted by law. For the sake of clarity, [Aquila] is not releasing or otherwise discharging the Company Group with respect to his ownership of any shares of Common Stock other than the Purchase Shares. [Aquila] and [Solera] agree to perform all such further acts and execute and deliver all such further documents as may be reasonably required in connection with the consummation of the Purchase Share transactions contemplated hereby in accordance with the terms of this Agreement.

(e) [Solera] agrees that [Aquila]'s separation of employment with Solera does not constitute an Event of Default (as defined in that certain Promissory Note, dated March 3, 2016, between [Solera]

and [Aquila] ("Note")) for purposes of the Note or the Pledge Agreement. Upon and following the Separation Date, the Note and Pledge Agreement remain in full force and effect (including provisions requiring payment upon the occurrence of an Event of Default following the Separation Date) and shall remain outstanding in accordance with the terms thereof. Further, the Exchanged Shares not repurchased by [Solera] hereunder remain Pledgor Shares under the Pledge Agreement.

30. Section 2(k) of the Original Stock Option Agreement (entitled "Repurchase Option") says:

> (k) Repurchase Option. Notwithstanding anything to the contrary in Section 12 of the Plan, (i) the Repurchase Option shall only be applicable if (A) Optionholder's employment with the Company or its Subsidiaries is terminated for Cause or (B) Optionholder materially violates Section 6 of Optionholder's Confidentiality, Invention Assignment, Non-Solicit, Non-Compete and Arbitration Agreement, and (ii) the Company Expiration Date shall mean (A) in the case of a termination for Cause, 180 days after the Termination Date and (B) in the event of a willful and material violation of Section 6 of Optionholder's Confidentiality, Invention Assignment, Non-Solicit, Non-Compete and Arbitration Agreement, the date six (6) months following the date the Company becomes aware of such a material violation (but in no event later than the date 24 months following the Termination Date). The price per share upon exercise of the Repurchase Option shall be Original Cost.

31. Section 8 of the Separation Agreement (entitled "Restrictive Covenants") says as follows:

> [Aquila] acknowledges and agrees that [Aquila] remains subject to all of the terms and conditions contained in the Restrictive Covenant Agreement; provided, however, that notwithstanding Section 6.1 of the Restrictive Covenant Agreement, the Employers acknowledge and agree that [Aquila] (i) will not be deemed to have breached Section 6.1 of the Restrictive Covenant Agreement with respect to any discussions with, offers to, or other solicitations of any Solera employees, consultants or agents, which may have occurred prior to the Separation Date and (ii) may employ or engage, or continue to employ or engage,

> Renato Giger, Marcia Hensley, Eric Carrion, Michael Horvath, Robert Bell, Christian Kaiser and/or Andrew Balzer
> (but not, for the avoidance of doubt, Ron Rogozinski) following the Separation Date; and provided, further, the Employers acknowledge and agree that, for purposes of determining [Aquila's] compliance with Section 2 of the Restrictive Covenant Agreement, no information or materials will be Proprietary Information (as defined in the Restrictive Covenant Agreement) unless such information or materials were treated as, or deemed to have been, confidential or proprietary information by Solera. For the avoidance of doubt, the definition of confidential or proprietary information in this Agreement, the Restrictive Covenant Agreement or any other applicable agreements between the Parties shall exclude information or materials that were not treated as, or deemed to have been, confidential or proprietary information by Solera. (Original Emphasis).

32. On June 14, 2019, Bryce L. Friedman ("Friedman") of Simpson Thacher & Bartlett LLP, counsel for Solera (and Solera's controlling shareholder, Vista Equity Partners), sent a letter to Sanford L. Michelman ("Michelman") of Michelman & Robinson, LLP, counsel for Aquila, asserting various frivolous claims of breach against Aquila for purportedly failing to return Solera information property. This letter lacks merit and was simply used to fabricate a reason for Solera not to pay Aquila his bonus, severance, and COBRA payments. Attached as **Exhibit 5** is a true and correct copy of Friedman's June 14, 2019 letter.

33. In fact, the letter was so knowingly fabricated, Aquila responded by reiterating what Solera already knew; namely, all of the Solera information property was not only returned or destroyed, but that

the only party that had access to any remaining sites that contained such information was Solera. Specifically,

Aquila and Solera would utilize a document sharing site known as "Box.com". When Aquila attempted to delete the information on the site, the site would not let him access it because the passwords to do so were being sent to his old Solera email account that he no longer received. Despite telling Solera (via Friedman) that only it could delete the files, Solera still tried to use the "Box.com" site containing Solera information (that Aquila cannot access) as a reason to allege breach and withhold Aquila's bonus, severance, and COBRA payments. Attached as **Exhibit 6** is a true and correct copy of an inventory of returned information property and a response from Box.com.

34. On July 12, 2019, after Solera's prior manufactured excuses failed, in furtherance of Solera's plan to manufacture reasons not to pay Aquila his bonus, severance, and COBRA payments, Friedman sent another letter to Michelman claiming Aquila breached Section 6.1 of the Restrictive Covenant Agreement by soliciting, offering employment, attempting to hire, and/or recruiting Dibble.

Attached as **Exhibit 7** is a true and correct copy of Friedman's July 12, 2019 letter.

35. This was a surprise to Aquila given that (a) Solera had previously agreed to Dibble working during the Joint Employer Period; (b) Solera had been fully aware of and supported the long-standing

dual-working relationship; and (c) Adventure is not a party to the Restrictive Covenant Agreement.

36. On July 15, 2019, the date by which Solera was obligated to pay Aquila his bonus payment, Friedman sent another letter to Michelman claiming that Aquila is not entitled to his bonus payment under Section 2(a) of the Separation Agreement because Aquila violated Section 6 of the Restrictive Covenant Agreement (*i.e.*, continuing to employ Dibble). Attached as **Exhibit 8** is a true and correct copy of Friedman's July 15, 2019 letter.

37. On July 20, 2019, Michelman sent a response to Friedman's July 12, 2019 and July 15, 2019 letters. In that letter, Michelman explained why Solera's position lacks merit and explained that Solera's sudden objection to Dibble's continued employment with Adventure was not premised on any legitimate business reason but was pretextual and designed to avoid Solera's obligations under the terms of the Separation Agreement. Given Solera's conduct, Aquila notified Solera it was in breach of the Separation Agreement. Attached as **Exhibit 9** is a true and correct copy of Michelman's July 20, 2019 letter.

38. Friedman responded on July 22, 2019, reiterating Solera's prior frivolous arguments that Aquila violated Section 6.1 of the Restrictive Covenant Agreement. Ironically, in its letter, Solera

admitted that Section 6.1 of the Restrictive Covenant Agreement is *unenforceable* under Texas law, but still refused to make the Aquila Bonus Payment. Specifically, Solera *admitted* that Section 6.1 precludes Aquila from hiring *anyone* who is or has been, in the six months prior to his hiring by Aquila, an employee of Solera or its affiliates. By such statement, Solera concedes its No-Hire Provision is overbroad and unenforceable; violates Texas public policy; and imposes a greater restraint than is necessary to protect the goodwill or other business interest of Solera. Attached as

Exhibit 10 is a true and correct copy of Friedman's July 22, 2019 letter.

39. On July 23, 2019, Aquila sent a letter to Solera giving notice that he is exercising all Vested Options under the Original Stock Option Agreement in a cashless manner under Section 2(3)(ii) of the Original Stock Option Agreement.

Attached as **Exhibit 11** is a true and correct copy of Aquila's July 23, 2019 letter.

40. On July 24, 2019, Michelman sent a final notice letter of Solera's breach of Aquila's bonus payment terms under the Separation Agreement. In this letter, Michelman outlined extensive authority and analysis highlighting why the No-Hire Provision is overbroad, overly restrictive, unreasonable, and violates

Texas public policy and the Legislature's intent in enacting the Covenants Not to Compete Act. Michelman also demanded Solera pay the bonus payment to Aquila

by July 25, 2019. Attached as **Exhibit 12** is a true and correct copy of Michelman's July 24, 2019 letter.

41. Despite Solera's *admission* that Section 6.1 is unenforceable, Solera refused to make the bonus payment to Aquila by July 25, 2019.

42. Because Solera refused to make the bonus payment as required under the Separation Agreement, Aquila initiated arbitration of the bonus payment issue on July 26, 2019 by serving a Demand for Arbitration to Friedman along with a Demand for Arbitration Complaint, which was required under Section 13 of the Separation Agreement and Section 8.1 of the Restrictive Covenant Agreement.

43. Since tendering the July 26, 2019 Demand for Arbitration, Solera has continued to breach the Separation Agreement. Under Section 2(b) of the Separation Agreement, Aquila is entitled to a severance payment payable in equal installments during the 18 month period following Aquila's separation from Solera in accordance with Solera's payroll practices, beginning on the first payroll date at least 60 days following Aquila's separation from Solera (the "Initial Payment Date"). Further, under Section 2(b) and 2(c) of the Separation Agreement, Aquila is entitled to payments of COBRA premiums as of Aquila's separation date with Solera. Aquila was entitled to this payment by the Initial Payment Date.

44. Aquila's separation date with Solera was May 23, 2019. Sixty days from that date was July 22, 2019. Like Aquila's bonus payment, Solera has refused to pay any amount of the severance and COBRA payments to Aquila.

45. Because of Solera's continued refusal to pay Aquila his severance and COBRA payments, Aquila initiated a separate arbitration of the severance and COBRA payment issues on August 2, 2019 by serving a Demand for Arbitration to Friedman along with a Demand for Arbitration Complaint.

46. But Solera's breaches of the Separation Agreement still continued. Under Section 3 of the Separation Agreement, Solera agreed that Aquila held Vested Options and that Aquila may exercise any of the Vested Options in accordance with the Original Stock Option Agreement. Based on the agreed upon provisions of Section 3 of the Separation Agreement, Aquila notified Solera on July 23, 2019 of his cashless exercise of Vested Options.

47. On August 5, 2019, Friedman sent a letter to Michelman rejecting Aquila's cashless exercise of Vested Options. In this letter, Friedman notified Michelman that Solera is exercising its repurchase option under Section 2(k) of the Original Stock Option Agreement because of Aquila's alleged breach of Section 6 of the Restrictive Covenant Agreement. In effect, Solera has refused to honor Aquila's notice of cashless exercise of Vested Options, which he is legally entitled

to and which Solera is obligated to honor, based on their manufactured claim that Aquila's hiring of Dibble violated Section 6.1 of the Restrictive Covenant Agreement. Attached as **Exhibit 13** is a true and correct copy of Friedman's August 5, 2019 letter.

48. Solera's conduct demonstrates it was always Solera's intention to use Dibble as a pretext to justify breaching the Separation Agreement. Solera never had any intention of performing its obligations with respect to Aquila's bonus, severance, and COBRA payments under Section 2 of the Separation Agreement and Vested Options under Section 3 of the Separation Agreement.

49. In fact, on August 23, 2019, Dibble *finally* was able to speak with a Solera representative. During that call, Dibble stated he would be willing to work at the Solera subsidiary, effective on September 16, 2019, if it would resolve the dispute between Aquila and Solera. Solera agreed, but, consistent with its badfaith tactics, still refuses to honor its contractual commitments to Aquila. It is now unknown whether Dibble will ultimately commence work on September 16, 2019, given Solera's sharp and dishonest business practices.

50. Solera's refusal to make the required bonus, severance, and COBRA payments and closing actions relating to Aquila's Vested Options based upon a sudden objection to Dibble's continued

employment with Adventure is not premised on any legitimate business reason, but is a pretext to avoid Solera's obligations under the unambiguous terms of the Separation Agreement.

CAUSE OF ACTION

SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF REGARDING AQUILA'S RIGHT TO EXERCISE VESTED OPTIONS

(Against Solera Global Holding Corp., Solera Holdings, Inc., and Does 1-50, inclusive)

51. Aquila re-alleges and incorporates by this reference each and every foregoing paragraph of this Complaint, as though fully set forth in full.

52. Aquila entered into the Separation Agreement, a written contract, with Solera on or about May 27, 2019.

53. Aquila has performed all conditions, covenants, and promises required of him under the terms and conditions of the Separation Agreement, except for those promises, conditions, and covenants Aquila was excused from having to discharge.

54. As detailed above, Solera promised, pursuant to Section 3 of the Separation Agreement, to honor Aquila's right to exercise his Vested Options under the Original Stock Option Agreement.

55. On July 23, 2019, Aquila provided notice to Solera that he was exercising all of his Vested Options in a cashless manner under Section 2(3)(ii) of the Original Stock Option Agreement.

56. Solera breached its obligations under both the Separation Agreement and the Original Stock Option Agreement by refusing to and failing to honor Aquila's July 23, 2019 cashless exercise of Vested Options..

57. As a result, Aquila may seek specific performance and injunctive relief under the express provisions of the parties' agreements.

58. In particular, paragraph 18 of the Plan (entitled "Remedies") provides, in relevant part, that:

> Each Participant and the Company acknowledges and agrees that money damages may not be an adequate remedy for any breach of the provisions of this Plan and that any party may in its sole discretion apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) ***for specific performance and/or other injunctive relief*** in order to enforce or prevent any violations of the provisions of this Plan.

(emphasis added).

59. Likewise, Section 9.1 of the Restrictive Covenant Agreement provides that either party may seek:

> [A] temporary restraining order, preliminary injunction or similar injunctive relief from a court of competent jurisdiction in order to ***preserve the status quo or prevent irreparable injury*** pending the full and final resolution of the dispute through arbitration, without the necessity of showing any actual damages or that monetary damages would not afford an adequate remedy, and without the necessity of posting any bond or other security.

(emphasis added).

60. As a direct and proximate result of Solera's breaches of the Separation Agreement, Aquila has suffered harm whereby there is no adequate legal remedy

available. Aquila's purpose in exercising his Vested Options was to obtain possession of specific shares of Solera's common stock – something he expressly bargained for as part of the Separation Agreement. Ownership of these shares of Solera's common stock holds legal and equitable value separate and apart from any monetary value that could be attributed to each share.

61. Furthermore, if Solera exercises its Repurchase Option of Aquila's Vested Options under Section 2(k) of the Original Stock Option Agreement, as it claimed it will because of Aquila's alleged breach of Section 6 of the Restrictive Covenant Agreement, Aquila will have no legal recourse to obtain possession of those shares of Solera's Common Stock because Aquila's Vested Options and right to possession of Solera Common Stock would be extinguished.

62. Section 6 of the Restrictive Covenant Agreement is unenforceable.

But even if such provision was enforceable, Aquila did not breach Section 6 of the Restrictive Covenant Agreement. Accordingly, Aquila seeks a Court Order compelling the following:

a. Solera is ordered to specifically perform its contractual duties under the Separation Agreement and to honor Aquila's July 23, 2019 cashless exercise of Vested Options; and

b. Solera is temporarily, preliminarily, and permanently enjoined from exercising its Repurchase Option under Section 2(k) of the Original Stock Option Agreement.

PRAYER FOR RELIEF

WHEREFORE, Aquila prays for the following relief against Solera Global Holding Corp., Solera Holdings, Inc., and Does 1-50, inclusive, as follows: 1. That Solera be ordered to perform specifically its contractual duties under the Separation Agreement and to honor Aquila's July 23, 2019 cashless exercise of Vested Options;

2. That Solera be temporarily, preliminarily, and permanently enjoined from exercising its Repurchase Option under Section 2(k) of the Original Stock Option Agreement;
3. Reasonable attorneys' fees and costs Aquila incurred in bringing this suit; and
4. Any other equitable relief that the Court deems proper.

Dated: September 4, 2019

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