

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
5 Calabasas, CA 91301
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Rosie Shramek
and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SAN DIEGO**

11
12 ROSIE SHRAMEK, individually and on
behalf of all similarly situated individuals,

13 Plaintiff,

14 v.

15 MARBLE USA, INC., a California
16 corporation, and DOES 1 through 10,
inclusive,

17 Defendants.
18
19
20
21
22
23
24
25
26
27
28

CASE NO: 37-2020-00031880-CU-OE-CTL

Assigned to the Hon. Kenneth J. Medel, Dept. C-66

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: November 5, 2021
Time: 9:30 a.m.
Dept.: C-66

Reservation Number: 2380529

Complaint Filed: September 11, 2020

1
2 I, DANIEL F. GAINES, hereby declare and state as follows:

3 1. I am an attorney duly admitted to the practice of law in the State of California. I
4 am a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Rosie Shramek (“Shramek”
5 or “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts
6 set forth herein and if called as a witness to testify to them, I could and would do so competently.

7 **Education and Experience:**

8 2. I obtained my BS degree from the University California at Berkeley in 2003. I
9 majored in Business Administration at the Haas School of Business.

10 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I
11 was a member of the editorial board of the Virginia Tax Review. I was also the recipient of the
12 Lacy Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused
13 my studies on tax and real estate. I earned my JD and became a member of the California Bar in
14 2007.

15 4. Since becoming a member of the Bar, I have practiced law with my father,
16 Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with an emphasis in
17 business, real estate, and employment disputes like this one. Over 95% of my practice is
18 devoted to complex employment litigation similar to the instant action.

19 5. My firm has represented employees in complex employment matters such as this
20 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
21 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
22 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

23 **Factual and Procedural Background:**

24 6. On September 11, 2020, Plaintiff Shramek exhausted the pre-filing requirements
25 of the California Private Attorneys General Act of 2004, Labor Code section 2698 et seq.
26 (“PAGA”).

27 7. On September 11, 2020, Plaintiff Shramek initiated this Action in the San Diego
28 County Superior Court by filing a class action complaint on behalf of herself and all other non-

1 exempt California employees. As subsequently amended on May 5, 2021, the Action asserts
2 class and representative action claims against Defendant for (1) failure to provide rest periods of
3 compensation in lieu thereof in violation of Labor Code § 226.7 and IWC Wage Order 5-2001;
4 (2) failure to provide meal periods of compensation in lieu thereof in violation of Labor Code §§
5 226.7, 512, and 1194 and IWC Wage Order 5-2001; (3) failure to pay all overtime wages due in
6 violation of Labor Code §§ 510 and 1194; (4) knowing and intentional failure to comply with
7 itemized employee wage statement provisions in violation of Labor Code § 226(a), (e), and (h);
8 (5) failure to pay wages due at separation of employment in violation of Labor Code §§ 201-203;
9 (6) violation of California's Unfair Competition Law, Bus. & Prof. Code section 17200 *et seq.*;
10 and (7) PAGA penalties for violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510,
11 512, 558 and 1194.

12 8. Defendant denies any and all liability or wrongdoing of any kind associated with
13 the claims alleged in the Action, and further denies that the Action is appropriate for class
14 treatment for any purpose other than this settlement. Defendant contends that it has complied at
15 all times with all applicable laws. It is Defendant's position that, if this case were to be litigated,
16 class certification would be inappropriate because there is not an ascertainable class, Plaintiff is
17 not an adequate class representative, Plaintiff's claims are not typical of putative class members,
18 individual issues predominate over class issues, and because a class action is not superior. The
19 Action, the negotiation and execution of this Settlement Agreement, and all acts performed or
20 documents executed pursuant to or in furtherance of the Settlement Agreement (i) shall not be
21 used as an admission or evidence of wrongdoing on behalf of Defendant; (ii) shall not be an
22 admission or evidence of fault on behalf of Defendant in any action before a civil, criminal, or
23 administrative agency; and (iii) shall not be deemed to be, and may not be used as, an admission
24 or evidence of the appropriateness of these or similar claims for class certification in the Action
25 or with respect to any other proceeding.

26 9. Shramek contends that Defendant violated the California Labor Code and that this
27 case is appropriate for class certification.

28 \\\

1 **Investigation And Settlement Discussions:**

2 10. The Parties have conducted a thorough investigation and analysis of the claims
3 made in this Action. Prior to a mediation, the Parties met and conferred and Defendant agreed to
4 provide Plaintiff with copies of all documents related to policies and procedures, as well as a
5 sampling of time punch and payroll records for 10% of the employees in each of Defendant's
6 restaurants, allowing each side with a reasonable opportunity to assess the respective strengths
7 and weaknesses of their claims and defenses.

8 11. On March 31, 2020, the Parties participated a full-day, private mediation with the
9 Honorable Joel Pressman (Ret.), a respected jurist and experienced mediator who is well-versed
10 in putative class and representative actions, and who previously presided over a department in
11 the San Diego County Superior Court. Through the mediation process, with Judge Pressman's
12 assistance, and through a mediator's proposal, the Parties reached an agreement to resolve this
13 Action. Each Party was represented by experienced counsel during the arms'-length, good-faith
14 negotiations facilitated by Judge Pressman.

15 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
16 **Litigation:**

17 12. Based on our independent investigation and evaluation, my colleagues and I are of
18 the opinion that settlement for the consideration and on the terms set forth in the Settlement
19 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
20 light of all known facts and circumstances, including the risk of significant delay, the risk the
21 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

22 13. The Parties agree that the Settlement Class described herein may be certified for
23 settlement purposes only and that this motion for approval seeking, *inter alia*, certification of the
24 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
25 approved, the certification will have no force or effect and will immediately be revoked. The
26 Parties further agree that certification for purposes of approving the Settlement Agreement is in
27 no way an admission that class certification is proper under the more stringent standard applied
28

1 for litigation and that evidence of this limited stipulation for settlement purposes only will not be
2 admissible for any purpose in this or any other proceeding.

3 14. The Parties have jointly prepared the Settlement of Class and PAGA
4 Representative Action and Release of Claims (“Settlement Agreement” or “Stipulation of
5 Settlement” or “Stip.”), a true and correct copy of which is attached hereto as **Exhibit B**. All of
6 the terms of the Parties’ settlement are contained within the Settlement Agreement. At all times,
7 the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length.

8 15. My office created a comprehensive damage analysis using sampling information
9 obtained through informal discovery. This damage analysis reveals that the negotiated
10 settlement falls within a realistic range of recovery on class members’ claims.

11 16. Plaintiff alleges that Defendant failed to permit or authorize Plaintiff and Class
12 Members to take timely, 30-minute meal periods for shifts greater than 5 hours in length, in
13 violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001. Labor Code § 512
14 provides that employers (like Defendant) may not employ an employee for a work period of
15 more than five hours without providing a 30-minute meal period starting no later than the end of
16 the fifth hour. Plaintiff and Class Members allege that they were frequently unable to take a
17 lawful meal break when they worked shifts in excess of five hours in duration because they were
18 too busy and there were not enough employees to cover the work if one took a meal break.

19 17. Based on an expert analysis of Defendant’s time data consisting of approximately
20 61,560 workweeks, approximately 30.5% of meal breaks were late, short, or not taken. Plaintiff
21 concluded the maximum value of this claim was \$954,000, but it required a significant discount
22 for settlement purposes due to the risks inherent in further litigation, including class certification
23 risk, and the risk of loss due to Defendant’s numerous defenses on the merits, including that
24 Class Members properly waived their meal breaks and that Defendant paid substantial meal
25 break premiums during the Class Period, demonstrating that it fully intended to, and did, pay any
26 penalties owed based on any late, short, and missed meal periods.

27 18. Plaintiff further alleges that Defendant failed to provide Plaintiff and Class
28 Members with legally compliant rest periods, or premium wages consisting of one hour’s pay in

1 lieu thereof, as required by Labor Code § 226.7 and Wage Order 4-2001. Because the nature of
2 the work performed by Plaintiff and other Class Members was so busy, and because Defendant
3 failed to staff or employ a sufficient number of people to perform the work, Plaintiff contends
4 that employees were routinely not authorized and permitted to take timely rest periods. When
5 they were able to take a rest period, she contends that they were oftentimes late, interrupted or
6 cut short.

7 19. Plaintiff contends that Defendant's rest break policy is facially invalid and violates
8 California law, which requires that all non-exempt employees be authorized and permitted to
9 take a paid ten-minute rest break for every four hours of work, or major fraction thereof. 8
10 C.C.R. § 11040, section 12. She also contends that Defendant maintained an improper policy
11 and practice requiring Plaintiff and Class Members to remain on Defendant's premises, resulting
12 in impermissible on-duty rest periods subject to employer control. If Plaintiff could demonstrate
13 a 25% violation rate for rest periods, the value of this claim would be approximately \$771,750.
14 It is not clear that Plaintiff could prevail on such a claim because of the risks inherent in class
15 certification, particularly with respect to claims for rest periods, which are not required to be
16 recorded. Rest periods are also subject to waiver, and Defendant argued that any missed rest
17 periods were waived by employees and not denied. Finally, Defendant argues that its policies
18 were always enforced in a manner which complies with California law.

19 20. Because of the risks of loss on this claim, and the inherent difficulty in proving
20 violations on a class wide basis, a discount was required for settlement purposes; the
21 compromise reached is a fair and reasonable one.

22 21. Plaintiff alleges that Defendant did not pay approximately \$40,000 in overtime and
23 double time wages due to a small group of Class Members employed as managers and who
24 earned incentive bonuses during their employment. This claim was also subject to defenses
25 which necessitated a compromise to resolve at this juncture, including that all such bonuses were
26 discretionary and therefore not subject to inclusion in the regular rate of pay, such that no
27 overtime or double time was ever underpaid.

1 22. Class Members also sought wage statement penalties pursuant to Labor Code §
2 226(e), waiting time penalties pursuant to Labor Code § 203 and PAGA penalties derivative of
3 the underlying violations alleged. The value of these penalties – which are derivative,
4 discretionary, and subject to defenses of their own – could be substantial, but their recovery
5 carried substantial risk.

6 23. Under new applicable case law, it became unlikely that Plaintiff would recover on
7 his derivative waiting time penalty and wage statement penalty claims because the Court could
8 find that they will not stem from meal and rest break claims (and only a small group of Class
9 Members were denied overtime wages). It is also possible that, because these are derivative
10 claims (i.e. Plaintiff must prevail on her underlying unpaid wage, meal and rest break claims to
11 recover on these penalty claims) and subject to defenses to good faith and willfulness, Plaintiff
12 would not recover on them at all even if they were not otherwise barred by applicable case law.
13 As a result, Plaintiff gave them a discounted value for settlement purposes.

14 24. A discount on the maximum value of Class members' claims was required (and
15 warranted) to resolve the matter at this junction. Class certification is a substantial risk in any
16 class action case. Here, while Plaintiff maintains that the requirements of class certification are
17 met, Defendant proffers various arguments why class treatment is not appropriate here, including
18 but not limited to that individualized inquires among class members predominate over common
19 ones – particularly with respect to Plaintiff's rest period claims. If Defendant were to defeat
20 Plaintiff's class certification motion, there would be no class wide relief whatsoever, and most
21 Class members would likely not file individual claims.

22 25. Finally, Plaintiff faced the risk that she would not obtain a maximum
23 damage/penalty award on all (or any of) her claims. For example, Plaintiff seeks discretionary
24 penalties pursuant to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that
25 the Court would not impose all penalties pursuant to its discretionary power to reduce them.

26 26. Defendant strongly contends that its policies and practices do not violate any laws.
27 It contends that its meal and rest break policies properly provided for all meal and rest periods
28

1 and fully compensated its employees for all time worked. It further contends that the wage
2 statements it provides to its employees are fully compliant with California law.

3 27. When the costs and risks of non-certification and loss on the merits are considered,
4 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

5 28. The settlement for each participating Class Member is fair, reasonable and
6 adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
7 of pursuing such litigation. The settlement shall finally resolve all claims of the Class Members
8 as alleged in the Action.

9 **Class Certification Requirements:**

10 29. To date, no class has been certified. The Stipulation of Settlement contains a
11 provision pursuant to which we stipulate to the Court's provisional certification of the
12 approximately 2,893-member Settlement Class, but do so for purposes of this settlement only.

13 30. Plaintiff contends that class certification is appropriate here. In this case, the Class
14 Members are identifiable from Defendant's employment and payroll records. Further, the
15 Settlement Class is sufficiently numerous to warrant certification. According to Defendant's
16 records, the Class contains approximately 2,893 employees.

17 31. The Class Members' claims all stem from a common source: members of the
18 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
19 with their employment. All members of the Class seek the same relief under the same California
20 laws. Under these circumstances, the commonality requirement is satisfied for purposes of
21 certifying the Settlement Class for settlement purposes.

22 32. In this case, named Plaintiff and proposed Class Representative Rosie Shramek is
23 a former non-exempt employee who worked for Defendant in the State of California during the
24 Class Period. She contends that Defendant failed to provide meal and rest periods, failed to pay
25 all overtime wages, failed to comply with itemized employee wage statement provisions, and
26 failed to timely pay wages at the separation of employment, in violation of Labor Code §§ 201-
27 203, 226(a), 226.7, 510, 512, 1194, 2698, 2699, and Business & Professions Code § 17200,
28 arising from employment by Defendant during the Class Period. She has the same claims as

1 those that the members of the Settlement Class would reasonably be expected to bring based on
2 the course of conduct alleged herein.

3 33. Plaintiff Shramek has also demonstrated that she will aggressively and
4 competently assert the interests of the proposed Settlement Class; she has taken an active role in
5 this litigation and has no apparent conflicts with other Class Members.

6 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

7 34. My office submitted the Motion for Preliminary Approval (“MPA”) and
8 supporting documentation, including the Settlement Agreement, to the LWDA via electronic
9 submission in compliance with Labor Code § 2699(1)(2) concurrently with the filing of the
10 motion with this Court.

11 I declare, under penalty of perjury, under the laws of the State of California, that the
12 foregoing is true and correct. Executed this 21st day of May, 2021 at Calabasas, California.

13
14 *Daniel F. Gaines*
15 _____
16 DANIEL F. GAINES
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ROSIE SHRAMEK, individually and on
behalf of all similarly situated individuals,

Plaintiff,

v.

MARBLE USA INC, a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. 37-2020-00031880-CU-OE-CTL

**JOINT STIPULATION FOR
SETTLEMENT OF CLASS AND PAGA
REPRESENTATIVE ACTION AND
RELEASE OF CLAIMS**

1 **IT IS HEREBY STIPULATED**, by and between Plaintiff ROSIE SHRAMEK
 2 (“Plaintiff”), individually and on behalf of all others similarly situated and on behalf of the
 3 general public, on the one hand, and Defendant MARBLE USA INC (“Defendant”), on the other
 4 hand (collectively, the “Parties”), and subject to the approval of the Court, that the above-
 5 captioned action is hereby compromised and settled pursuant to the terms set forth below:

6 **1. DEFINITIONS.**

7 Unless otherwise defined, capitalized terms used in this Settlement Agreement shall have
 8 the meanings set forth below:

9 1.1 “**Action**” means the civil class action case entitled *Shramek v. Marble USA Inc, et*
 10 *al.*, currently pending before the Superior Court of California for the County of San Diego as
 11 Case No. 37-2020-00031880-CU-OE-CTL.

12 1.2 “**Claims**” means all claims that were actually alleged or which could have been
 13 alleged in the Action by Plaintiff, on behalf of herself, the Class Members, or the allegedly
 14 aggrieved employees, based on the facts alleged in the operative First Amended Class and
 15 Representative Action Complaint, and occurring during the Class Period (defined below),
 16 including but not limited to: (1) failure to provide rest periods of compensation in lieu thereof in
 17 violation of Labor Code § 226.7 and IWC Wage Order 5-2001; (2) failure to provide meal periods
 18 of compensation in lieu thereof in violation of Labor Code §§ 226.7, 512, and 1194 and IWC
 19 Wage Order 5-2001; (3) failure to pay all overtime wages due in violation of Labor Code §§ 510
 20 and 1194; (4) knowing and intentional failure to comply with itemized employee wage statement
 21 provisions in violation of Labor Code § 226(a), (e), and (h); (5) failure to pay wages due at
 22 separation of employment in violation of Labor Code §§ 201-203; (6) violation of California’s
 23 Unfair Competition Law, Bus. & Prof. Code section 17200 *et seq.*; and (7) penalties pursuant to
 24 the Private Attorneys General Act (“PAGA”) for all California Labor Code violations that were
 25 or that could reasonably have been alleged in the Action based on the facts stated in the First
 26 Amended Complaint. The term “Claims” also includes Plaintiff’s claim that Defendant is liable
 27 for the attorneys’ fees incurred to prosecute this Action on behalf of Class Members, including
 28 fees incurred for the services of Class Counsel, and any claim that Defendant is liable for any

1 other remedies, civil penalties, statutory penalties, interest, or claims arising under California law
2 based on the facts alleged in the operative First Amended Complaint. The term “Claims” also
3 includes all claims that Plaintiff, the Class Members, and the allegedly aggrieved employees may
4 have against the Released Parties relating to (i) the payment, taxation and allocation of attorneys’
5 fees and costs to Class Counsel pursuant to this Settlement Agreement, (ii) the payment, taxation
6 and allocation of Plaintiff’s Service Award pursuant to this Settlement Agreement, and (iii) the
7 payment, taxation, and allocation of penalties under the PAGA.

8 1.3 “**Class**,” “**Settlement Class**,” or “**Class Members**” means all current and former
9 employees of Defendant, classified as non-exempt or hourly-paid workers not exempt from
10 overtime, who worked for Defendant in California at any time during the period starting four
11 years before the commencement of this action (September 11, 2016) through and including
12 March 31, 2021. Defendant has represented that there are a total of 2,893 Class Members that
13 meet this definition (the “Total Class Members”). Notwithstanding the immediately preceding
14 sentence, Defendant reserves the right to exclude any persons from the Class at any point if said
15 person files a lawsuit, files a PAGA letter, or otherwise seeks relief, up to and including final
16 approval, except the Class Representative. If excluded, such persons shall not be entitled to any
17 benefits under this settlement, but also shall not be bound by or release any claims released by
18 this Settlement.

19 1.4 “**Class Counsel**” means Daniel F. Gaines, Esq., Alex P. Katofsky, Esq., and Evan
20 S. Gaines, Esq. of Gaines & Gaines, APLC, which is presently located at 27200 Agoura Road,
21 Suite 101, Calabasas, California 91301.

22 1.5 “**Class Counsel Costs Award**” means the expenses and costs incurred by Class
23 Counsel for Class Counsel’s litigation and resolution of this Action, as awarded by the Court, in
24 an amount not to exceed Twelve Thousand Dollars (\$12,000). The Class Counsel Costs Award
25 shall be paid to Class Counsel out of the Total Settlement Amount.

26 1.6 “**Class Counsel Fees Award**” means the attorneys’ fees for Class Counsel’s
27 litigation and resolution of this Action, as awarded by the Court, which the Parties agree may not
28 exceed 35% of the Total Settlement Amount, i.e. Three Hundred Fifty Thousand Dollars

1 (\$350,000). The Class Counsel Fees Award shall be paid to Class Counsel out of the Total
2 Settlement Amount.

3 1.7 **“Class Information”** means information regarding Class Members that Defendant
4 will compile in good faith from its records and provide, confidentially, to the Settlement
5 Administrator. Class Information shall be provided in a Excel spreadsheet and shall include, for
6 each Class Member: full name, last known address, social security number, and the total number
7 of workweeks that the Class Member worked for Defendant during the Class Period. Because
8 Class Members’ sensitive personal information is included in the Class Information, the
9 Settlement Administrator shall maintain the Class Information securely and in confidence.
10 Access to such Class Information shall be limited to employees of the Settlement Administrator
11 with a need to use the Class Information for administration of the Settlement.

12 1.8 **“Class Period”** means the period from September 11, 2016 through and including
13 the date that this settlement agreement is preliminarily approved by the Court.

14 1.9 **“Class Representative”** means Plaintiff Rosie Shramek.

15 1.10 **“Complete and General Release”** means an irrevocable and unconditional release
16 given by the Class Representative, releasing the Released Parties from any and all charges,
17 complaints, claims, causes of action, debts, penalties, wages, sums of money, controversies,
18 agreements, promises, damages and liabilities of any kind or nature whatsoever, both at law and
19 equity, known or unknown, suspected or unsuspected, arising from conduct occurring on or
20 before the date the Class Representative signs this Settlement Agreement, related to or arising out
21 of her employment with Defendant and/or this lawsuit, including but not limited to all of the
22 Claims defined in Section 1.2. This provision is intended by the Parties to be all encompassing
23 and to act as a full and total release of any employment-related claims, whether specifically
24 enumerated herein or not, that the Class Representative might now have or had, that exists or ever
25 has existed, on or prior to the date this Settlement Agreement is signed. The words “claim” or
26 “claims” in this context includes without limitation all actions, claims and grievances, whether
27 actual or potential, known or unknown, related, incidental to or arising out of any act or omission
28 committed or omitted by the Released Parties through the date the Class Representative signs this

1 Settlement Agreement and/or arising out of her employment relationship with Defendant and/or
2 the cessation thereof, including a 1542 Waiver (defined below).

3 1.11 **“Court”** means the Superior Court of California for the County of San Diego.

4 1.12 **“Defendant”** means Marble USA, Inc.

5 1.13 **“Defense Counsel”** means Edwin M. Boniske, Esq. and Kyle Nageotte, Esq. of
6 Higgs Fletcher & Mack LLP.

7 1.14 **“Effective Date”** means the date by which this Settlement is finally approved as
8 provided herein and the Court’s Final Approval Order becomes binding. For purposes of this
9 Settlement Agreement, the Final Approval Order becomes binding: (1) if no Class Member
10 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
11 Procedure § 663 before the entry of Judgment, then the date of final approval by the Court; (2) if
12 a Class Member timely intervenes or files a motion to vacate the Judgment before the entry of
13 Judgment, then the later of (a) the day after the deadline by which a notice of appeal to the Court
14 of Appeals of the Final Approval Order and/or of an order rejecting any motion to intervene may
15 be timely filed, and none is filed; (b) if such an appeal is filed, and the appeal is finally disposed
16 of by ruling, dismissal, denial or otherwise, the day after the deadline for filing a request for
17 further review of the Court of Appeals’ decision passes and no further review is requested; (c) if
18 an appeal is filed and there is a final disposition by ruling, dismissal, denial, or otherwise by the
19 Court of Appeals and further review of the Court of Appeals’ decision is requested, the day after
20 the request for review is denied with prejudice and/or no further review of the decision can be
21 requested; or (d) if review is accepted, the day after the Supreme Court of California affirms the
22 Settlement. Defendant will not be obligated to fund this Settlement until and unless the Effective
23 Date is reached.

24 1.15 **“Final Approval Hearing”** means the hearing held to determine whether the
25 Court will enter a Final Approval Order finally approving this Settlement.

26 1.16 **“Final Approval Order”** means the Court’s entry of an order granting the Parties’
27 motion for final approval of and entering a final judgment in accordance with this Settlement.
28

1.17 **“Individual Settlement Payment”** means the amount payable to Class Members, as calculated pursuant to Paragraph 3.9.4, below.

1.18 **“Net Distribution Fund”** means the Total Settlement Amount, less the amount that the Court awards for the California Labor & Workforce Development Agency’s portion of the PAGA Award, Plaintiff’s Service Award, the Class Counsel Fees Award, the Class Counsel Costs Award, Settlement Administration Costs, and any Payroll Taxes.

1.19 **“Notice of Objection”** means a timely written request by a Class Member to object to this Settlement, which must be filed or mailed in the manner and times set forth in this Settlement Agreement and the Notice of Settlement.

1.20 **“Notice of Settlement”** means the Notice of Pendency of Class Action and Proposed Class Settlement that will be mailed to Class Members to apprise them of this Settlement.

1.21 **“PAGA Award”** means the portion of the Total Settlement Amount that is allocated to PAGA penalties, pursuant to California Labor Code section 2698 *et seq.*, and as awarded by the Court. The PAGA Award may not exceed Twenty Thousand Dollars (\$20,000), of which seventy-five percent (75%) will be distributed to the California Labor & Workforce Development Agency, and twenty-five percent (25%) will be distributed to Class Members as part of the Net Distribution Fund.

1.22 **“Payroll Taxes”** means the Defendant’s portion of FICA, FUTA, and all other state and federal employer payroll taxes, which shall be paid out of Total Settlement Amount.

1.23 **“Preliminary Approval”** means the preliminary approval of this Settlement, and **“Preliminary Approval Date”** means the date the Court enters an order granting preliminary approval of this Settlement.

1.24 **“Released Claims”** means the Claims that Class Members are fully releasing, in exchange for the consideration provided by this Settlement Agreement, whether arising at law, in contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief, penalties or liquidated damages as specified below. Released Claims means all claims actually asserted or which could have been asserted in the Action based on the facts alleged in the

operative First Amended Complaint, by the Class Members or the allegedly aggrieved employees against the Released Parties, arising during the Class Period during employment in a non-exempt position in California, including but not limited to claims for failure to provide rest breaks, failure to provide meal breaks, failure to pay all overtime compensation and wages, failure to provide accurate wage statements, failure to pay wages due at separation of employment, violation of California's Unfair Competition Law, Bus. & Prof. Code section 17200 *et seq.*, and for civil penalties under the PAGA for all violations of the California Labor Code and relevant Wage Orders that were or that could have been alleged in the Action based on the facts stated in the First Amended Complaint. The term "Released Claims" also includes Plaintiff's claims that Defendant is liable for the attorneys' fees incurred to prosecute this Action on behalf of Class Members, including fees incurred for the services of Class Counsel, and any claim that Defendant is liable for any other remedies, civil penalties, statutory penalties, or interest under California law based on the facts alleged in the operative First Amended Complaint. The term "Released Claims" also includes all claims that the Class Members may have against the Released Parties relating to (i) the payment, taxation and allocation of attorneys' fees and costs to Class Counsel pursuant to this Settlement Agreement, (ii) the payment, taxation and allocation of Plaintiff's Service Award pursuant to this Settlement Agreement, and (iii) the payment, taxation, and allocation of penalties under the PAGA.

1.25 **"Released Parties"** means Marble USA, Inc. including its subsidiaries, affiliates, parents, divisions, predecessors, employee benefit plans sponsored or maintained by it, its attorneys, and its respective successors and assigns, all of its past, present, and future respective officers, directors, board members, shareholders, employees, members, administrators, fiduciaries, trustees, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, beneficiaries and agents, and other persons acting for or on its behalf.

1.26 **"Request for Exclusion"** means a timely written request by a Class Member to exclude himself/herself from the Settlement, which must be completed and mailed in the times and manner set forth in Section 3.9.6 of this Settlement Agreement and the Notice of Settlement.

1.27 **“Response Deadline”** means the date sixty (60) calendar days after the Settlement Administrator mails the Notice of Settlement to Class Members and the last date on which Class Members may postmark and/or file, as applicable, Requests for Exclusion or Notices of Objection to the Settlement.

1.28 **“Service Award”** means the amounts that the Court may award to the Class Representative for her effort in assisting with the prosecution of the Action and as consideration for her execution of this Settlement Agreement and releasing her claims, as specified herein.

1.29 **“Settlement”** or **“Settlement Agreement”** means the disposition of the Action pursuant to this Agreement.

1.30 **“Settlement Administration Costs”** means the costs incurred by the Settlement Administrator in connection with the administration, in an amount not to exceed Twenty Five Thousand Five Hundred Dollars (\$25,500.00).

1.31 **“Settlement Administrator”** means ILYM Group, Inc.

1.32 **“Settlement Fund Account”** means the qualified bank account to be established by the Settlement Administrator pursuant to the terms of this Settlement Agreement, from which all monies payable under the terms of this Settlement shall be paid. The Parties agree to treat this account as a “Qualified Settlement Fund,” and the Settlement Administrator shall treat the Settlement Fund Account as the “employer” for purposes of federal and state income and employment tax withholding and reporting with respect to the Individual Settlement Payments.

1.33 **“First Amended Complaint”** means the operative pleading in the above-captioned action.

1.34 **“Total Settlement Amount”** means One Million U.S. Dollars (\$1,000,000), which is the maximum amount that Defendant shall be obligated to pay under this Settlement Agreement in order to settle this Action, subject to the Court’s approval.

1.35 **“Void Date”** means the date by which any checks issued to Class Members shall become void, *i.e.*, on the 181st day after mailing.

1.36 **“Workweeks”** means the number of weeks of employment that each Class Member worked for Defendant in a non-exempt position in California during the Class Period.

1 1.37 “**1542 Waiver**” means an express and complete waiver, to the fullest extent
2 permitted by law, of the provisions, rights and benefits of Section 1542 of the California Civil
3 Code, or any other similar provision under federal or state law, which Section provides: “A
4 general release does not extend to claims that the creditor or releasing party does not know or
5 suspect to exist in his or her favor at the time of executing the release, and that if known by him
6 or her would have materially affected his or her settlement with the debtor or released party.”

7 **2. RECITALS.**

8 2.1 Procedural History. This action was filed on September 11, 2020. The operative
9 First Amended Complaint was subsequently filed, in which Plaintiff asserts putative class and
10 representative claims for: (1) failure to provide rest periods of compensation in lieu thereof in
11 violation of Labor Code § 226.7 and IWC Wage Order 5-2001; (2) failure to provide meal periods
12 of compensation in lieu thereof in violation of Labor Code §§ 226.7, 512, and 1194 and IWC
13 Wage Order 5-2001; (3) failure to pay all overtime wages due in violation of Labor Code §§ 510
14 and 1194; (4) knowing and intentional failure to comply with itemized employee wage statement
15 provisions in violation of Labor Code § 226(a), (e), and (h); (5) failure to pay wages due at
16 separation of employment in violation of Labor Code §§ 201-203; (6) violation of California’s
17 Unfair Competition Law, Bus. & Prof. Code section 17200 *et seq.*; and (7) PAGA penalties for
18 violations of Labor Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558 and 1194.

19 2.2 Mediation. On March 31, 2020, the Parties participated a full-day, private
20 mediation with the Honorable Joel Pressman (Ret.), a respected jurist and experienced mediator
21 who is well-versed in putative class and representative actions, and who previously presided over
22 a department in the San Diego County Superior Court. Through that process, with Judge
23 Pressman’s assistance, the Parties reached an agreement to resolve this Action. Each Party was
24 represented by experienced counsel during the arms-length, good-faith negotiations facilitated by
25 Judge Pressman.

26 2.3 Discovery and Analysis. The Parties have conducted a thorough investigation and
27 analysis of the claims made in this Action. Prior to the mediation, the Parties met and conferred
28 and Defendant agreed to provide Plaintiff with copies of all pertinent policy documents as well as

1 a sampling of time punch and payroll records for 10% of the employees in each restaurant,
2 allowing each side with a reasonable opportunity to assess the respective strengths and
3 weaknesses of their claims and defenses.

4 2.4 Plaintiff's Reasons for Settlement. The Class Representative and Class Counsel
5 recognize the expense and length of continued proceedings necessary to litigate this Action
6 through trial, and the likelihood of protracted and expensive appellate review. They have also
7 taken into account the uncertainty and risk of the outcome of further litigation, as well as the
8 difficulties and delays inherent in such litigation. The Class Representative and Class Counsel are
9 likewise aware of the burdens of proof necessary to establish liability for the Claims asserted in
10 the Action, which claims have been, and remain, highly disputed by Defendant, and the
11 difficulties in establishing damages or justifiable penalties for Class Members under the theories
12 asserted in this action. Based on the foregoing, the Class Representative and Class Counsel have
13 determined that the Settlement set forth in this Settlement Agreement is a fair, adequate and
14 reasonable Settlement and is in the best interests of themselves and the Class Members.

15 2.5 Defendant's Reasons for Settlement. Defendant has concluded that any further
16 defense of this litigation would be protracted and expensive for all Parties. Defendant has
17 incurred substantial amounts of time, energy and resources in connection with this Action and,
18 unless this Settlement is made, will continue to be incur the same for the defense of the Claims.
19 Defendant has also taken into account the risks of further litigation in reaching its decision to
20 enter into this Settlement. Although Defendant vehemently denies and strongly disputes the
21 Claims and continues to contend it is not liable for any of the causes of action asserted in the
22 Action, Defendant has nonetheless agreed to settle in the manner and upon the terms set forth in
23 this Settlement Agreement to put to rest the Claims and avoid further protracted litigation.
24 Defendant agrees that the Settlement set forth in this Settlement Agreement is fair, adequate and
25 reasonable to and for the Class Members, even though Defendant makes no concessions or
26 admissions of wrongdoing or liability of any kind whatsoever.

27 2.6 Defendant has claimed, and continues to claim, that the Claims have no merit and
28 do not give rise to liability. Defendant specifically denies all of the allegations in the original

1 complaint and in the First Amended Complaint. This Settlement Agreement is a compromise of
2 such disputed claims. Nothing contained in this Settlement Agreement and no documents referred
3 to herein and no action taken to carry out this Settlement Agreement may be construed or used as
4 an admission by or against Defendant of any fault, wrongdoing or liability whatsoever. The
5 Parties acknowledge and agree that this Agreement, including the consideration provided herein,
6 has been, and is, made and received solely based on a compromise of disputed claims and that
7 this Agreement is not, and shall not be construed as an admission by Defendant of any liability.

8 2.7 The Parties also understand and agree that, pursuant to California Evidence Code
9 section 1152, and any other analogous rules of evidence that are applicable (including, but not
10 limited to, analogous rules of evidence applicable in other courts and other jurisdictions, such as,
11 for example, Federal Rule of Evidence 408), neither this Agreement, the settlement memorialized
12 herein, nor any act performed or document executed pursuant to or in furtherance of this
13 Agreement, is to be (or may be deemed to be) used in any civil, criminal, or administrative
14 proceeding in any court, administrative agency, or other tribunal as: (a) an admission of the
15 validity of any Released Claims or of any wrongdoing or liability of any of the Released Parties;
16 (b) evidence of the validity of any Released Claims or of any wrongdoing or liability of any of the
17 Released Parties; (c) an admission of any fault or omission of any of the Released Parties; or (d)
18 evidence of any fault or omission of any of the Released Parties.

19 **3. SETTLEMENT TERMS.**

20 The Parties agree as follows:

21 3.1 Certification of Settlement Class. Solely for the purposes of this Settlement, the
22 Parties stipulate and agree that, in order for this Settlement to occur, the Court should certify the
23 Settlement Class.

24 3.2 Appointment of Class Representative. The Parties agree that Plaintiff Rosie
25 Shramek should be appointed as the representative of the Settlement Class.

26 3.3 Appointment of Class Counsel. The Parties' agree that Daniel F. Gaines, Alex P.
27 Katofsky, and Evan S. Gaines of Gaines & Gaines, APLC should be appointed as Class Counsel
28 for the Settlement Class.

1 3.4 Appointment of Settlement Administrator. Solely for the purposes of this
2 Settlement, the Parties agree ILYM Group, Inc. shall be retained to serve as the Settlement
3 Administrator. The Settlement Administrator shall be responsible for establishing the Settlement
4 Fund Account, establishing an address for receipt of Class Member communications; preparing,
5 printing and mailing the Notice Packet materials to Class Members; receiving, reviewing, and
6 processing Requests for Exclusion, if any, submitted by Class Members; calculating Individual
7 Settlement Payments; calculating and paying any and all Payroll Taxes and any required
8 withholdings from the Individual Settlement Payments as required under applicable law, if any;
9 providing weekly status reports to Defense Counsel and Class Counsel; providing a due diligence
10 declaration for submission to the Court prior to the Final Approval Hearing; mailing Individual
11 Settlement Payments to Class Members; paying the Service Award, Class Counsel Fees Award
12 and Class Counsel Costs Award to Plaintiff and Class Counsel, Payroll Taxes to the appropriate
13 authorities, and the PAGA Award to the California Labor & Workforce Development Agency;
14 printing and providing Class Members, Plaintiff, and Class Counsel with IRS Forms W-2 and/or
15 1099 as required by applicable law; providing a due diligence declaration for submission to the
16 Court upon the completion of the Settlement; and for such other tasks as the Parties mutually
17 agree. The Settlement Administrator shall keep the Parties timely apprised of the performance of
18 all Settlement Administrator responsibilities, and shall provide copies of all 1099s and W-2s
19 issued in connection with this Settlement to Marble in a prompt manner. Any legally mandated
20 tax reports, tax forms, tax filings, or other tax documents required by administration of this
21 Settlement Agreement shall be prepared by the Settlement Administrator. Any expenses incurred
22 in connection with such preparation shall be a Settlement Administration Cost. The Parties agree
23 to cooperate in the administration process and to make all reasonable efforts to control and
24 minimize Settlement Administration Costs. The Parties each represent they do not have any
25 financial interest in the Settlement Administrator or otherwise have a relationship with the
26 Settlement Administrator that could create a conflict of interest.

27 3.5 Maximum Amount Payable by Defendant. Under the terms of this Settlement, and
28 in consideration for the entry of the Final Approval Order and judgment, as well as the various

1 releases, acts, and benefits delineated herein, the maximum monetary amount payable by
2 Defendant shall not exceed the Total Settlement Amount of One Million U.S. Dollars
3 (\$1,000,000). This Total Settlement Amount represents the maximum monetary payment
4 Defendant may be required to make to, or for the benefit of, Plaintiff, Class Members, the
5 LWDA, the taxing authorities, and Class Counsel for the Settlement of this action, and this Total
6 Settlement Amount shall be used to cover all Individual Settlement Payments to Class Members,
7 the PAGA Award, the Service Award to Plaintiff, the Class Counsel Fees Award, the Class
8 Counsel Costs Award, Settlement Administration Costs, all Payroll Taxes, and any and all other
9 costs or consideration associated with this Settlement.

10 3.6 Release as to All Class Members. As of the Effective Date, and subject to
11 Defendant's full payment of the Total Settlement Amount, all Class Members who do not timely
12 submit a Request for Exclusion will forever and finally release the Released Parties from all of
13 the Released Claims. The Released Claims include a 1542 Waiver as to the Released Claims *only*.
14 The Class Representative and Class Members' cause of action/claim for civil penalties under
15 PAGA based on the facts alleged in the operative First Amended Complaint is a Claim and is
16 fully released by Class Members, but only for the period September 11, 2019 (*i.e.*, one year prior
17 to the date the PAGA exhaustion letter was submitted) through the end of the Class Period. All
18 other Released Claims shall be released for the entirety of the Class Period. Class Members may
19 discover facts in addition to or different from those they now know or believe to be true with
20 respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed
21 to have, and by operation of the Final Approval Order shall have, fully, finally, and forever
22 settled and released any and all of the Released Claims, whether known or unknown, suspected or
23 unsuspected, contingent or non-contingent, which now exist or have existed, upon any theory of
24 law or equity now existing, including but not limited to, conduct that is negligent, intentional,
25 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
26 discovery or existence of such different or additional facts. Class Members agree not to sue or
27 otherwise make any claim against the Released Parties that seeks recovery for any of the Released
28 Claims. It is the intent of the Parties that the Final Approval Order entered by the Court shall have

1 full *res judicata* and collateral estoppel effect and be final and binding upon Class Members
2 regarding the Released Claims. If the Settlement Agreement is approved by the Court and not
3 otherwise terminated, the Parties will request that the Court enter a judgment in accordance with
4 this Settlement, and barring and permanently enjoining Plaintiff, all Class Members who do not
5 submit a Request for Exclusion, and the LWDA (as to the PAGA claims only) from filing,
6 prosecuting, or participating in any claims, suits, or administrative proceedings for any Released
7 Claims against the Released Parties.

8 3.7 Complete and General Release by Class Representative. As of the Effective Date
9 and subject to Defendant's full payment of the Total Settlement Amount, in consideration for the
10 promises and payments set forth in this Settlement Agreement, to which the Class Representative
11 is otherwise not entitled, the Class Representative agrees to provide a Complete and General
12 Release and a 1542 Waiver to the Released Parties, which shall release all claims and damages of
13 every kind and nature, actual or potential, known and unknown, which exist or could arise out of
14 her employment and/or the termination of her employment with Defendant, through and including
15 the date of execution of this Settlement Agreement. With respect to the General Release, Plaintiff
16 stipulates and agrees that, upon the Effective Date, she shall be deemed to have, and by operation
17 of the Court's Final Approval Order, shall have, expressly waived and relinquished, to the fullest
18 extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil
19 Code, or any other similar provision under federal or state law, which provides:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
21 **THAT THE CREDITOR OR RELEASING PARTY DOES**
22 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
23 **FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
 AND THAT IF KNOWN BY HIM OR HER WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR OR RELEASED PARTY.

24 Plaintiff acknowledges that she may discover facts in addition to or different from those
25 she now knows or believes to be true with respect to the subject matter of the Complete and
26 General Release, but upon the Effective Date, shall be deemed to have, and by operation of the
27 Final Approval Order shall have, fully, finally, and forever settled and released any and all of the
28 claims covered by the Complete and General Release, whether known or unknown, suspected or

1 unsuspected, contingent or non-contingent, which now exist, or have existed, upon any theory of
2 law or equity now existing, including, but not limited to, conduct that is negligent, intentional,
3 with or without malice, or a breach of any duty, law or rule, without regard to the subsequent
4 discovery or existence of such different or additional facts. The Parties understand and agree that
5 this includes all actions, group actions (including any pending or future collective, class, private
6 attorney general or representative actions for which the Class Representative may otherwise
7 qualify as a putative class member, aggrieved employee, or represented party), complaints and
8 grievances that could potentially be brought by Plaintiff against the Released Parties. Plaintiff
9 further agrees that this Complete and General Release includes, but is not limited to, any rights or
10 claims arising under the California Constitution; the California Labor Code; the California
11 Business & Professions Code; the California Code of Regulations; the California Fair
12 Employment and Housing Act; the Fair Labor Standards Act; Title VII of the Civil Rights Act of
13 1964; the Americans with Disabilities Act; federal and state family leave statutes; and any and all
14 other federal, state and local laws, statutes, executive orders, regulations and common law,
15 including contract, employment and tort law.

16 3.8 No Pending or Future Lawsuits. Other than this Action and the related claim with
17 the LWDA, Plaintiff represents that she does not have any lawsuits, administrative complaints or
18 charges currently pending against the Released Parties in any local, state or federal court or
19 administrative agency. Plaintiff further acknowledges that any claims raised therein, if any, shall
20 be fully and finally extinguished by virtue of this Settlement Agreement and the Court's Final
21 Approval Order, and that she will not bring any action in the future in which she seeks to recover
22 any damages from the Released Parties relating to or arising from her employment with
23 Defendant, existing as of the date of the execution of this Agreement, other than an action to
24 enforce her rights under this Settlement Agreement. Plaintiff further acknowledges and agrees
25 that, consistent with the terms of her Complete and General Release, she shall not participate in
26 any currently pending or future-filed class or representative action against the Released Parties, in
27 any manner. In the event a class action is certified or a collective action is commenced against the
28 Released Parties, Plaintiff agrees that she shall opt-out of any and all relief obtained thereby,

1 including without limitation any settlements, judgments, or relief of whatsoever kind or character
2 obtained for the class or group to the extent she receives notice of the same, and shall otherwise
3 have the affirmative obligation to decline participation in any and all such class action or
4 representative action cases, settlements, judgments, or relief of whatsoever kind or character.

5 3.9 Settlement Approval and Implementation Procedures. As part of this Settlement,
6 the Parties agree to the following procedures for obtaining the Court's Preliminary Approval of
7 the Settlement, notifying Class Members of the Settlement, obtaining the Court's Final Approval
8 of the Settlement, and processing Individual Settlement Payments.

9 3.9.1 Preliminary Approval. Promptly after execution of this Settlement
10 Agreement, Class Counsel will submit this Agreement to the Court and shall move the Court for
11 Preliminary Approval of the settlement set forth in this Agreement, certification of the Class for
12 settlement purposes only, appointment of Class Counsel and the Class Representative, and entry
13 of the Preliminary Approval Order, which shall set a Final Approval hearing date and approve the
14 Notice for dissemination to the Class. Class Counsel shall provide drafts of the motions for
15 preliminary approval and final approval to Defense Counsel for review and input no less than
16 seven (7) days prior to filing the same.

17 3.9.2 Class Information. No more than ten (10) calendar days after entry of the
18 Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class
19 Information for purposes of mailing the Notice Packet to Class Members.

20 3.9.3 Notice by First Class U.S. Mail. Upon receipt of the Class Information, the
21 Settlement Administrator will conduct a national change of address search for the most current
22 address of all former employee Class Members and will update such Class Members' addresses
23 as necessary. No more than fourteen (14) calendar days after receipt of the Class Information, the
24 Settlement Administrator shall mail the Notice Packet to all Class Members by First Class U.S.
25 Mail. The address identified by the Settlement Administrator as the current mailing address shall
26 be presumed to be the best mailing address for each Class Member.

27 3.9.4 Undeliverable Notices. Any Notice Packet that is returned to the
28 Settlement Administrator as non-deliverable on or before a date fourteen (14) calendar days

1 before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no
2 forwarding address is provided, the Settlement Administrator shall make reasonable efforts to
3 obtain an updated mailing address, including performing a skip trace. If an updated address is
4 identified, the Settlement Administrator shall resend the Notice Packet to the Class Member
5 within seven (7) calendar days of the date of the return of the original mailing. Class Members to
6 whom the Notice Packet is resent, after having been returned as non-deliverable to the Settlement
7 Administrator, shall have fourteen (14) calendar days thereafter or until the Response Deadline
8 has expired, whichever is later, to submit a Request for Exclusion and/or file the Notice of
9 Objection. The date of the postmark on the return envelope shall be the exclusive means used to
10 determine whether a Class Member has timely mailed his/her Request for Exclusion or Notice of
11 Objection on or before the relevant deadline. If a Class Member's Notice Packet is returned to the
12 Settlement Administrator more than once as non-deliverable, then an additional Notice Packet
13 shall not be re-mailed. If, for any reason, a Notice of Settlement is non-deliverable, the Settlement
14 Administrator will not mail an Individual Settlement Payment to the Class Member, but will hold
15 the Individual Settlement Payment until the Void Date, at which time the funds shall escheat the
16 California State Controller's Office for deposit in the Unclaimed Property Fund in the name of
17 the Class Member.

18 3.9.5 Notice Satisfies Due Process. Compliance with the notice procedures
19 specified herein shall constitute due and sufficient notice to Class Members of this Settlement and
20 shall satisfy the requirements of due process. Nothing else shall be required of, or done by, the
21 Parties, Class Counsel or Defense Counsel to provide notice of the proposed Settlement. In the
22 event the procedures in this Settlement Agreement are followed and the intended recipient of a
23 Notice Packet still does not receive the Notice Packet, the intended recipient shall remain a Class
24 Member and will be bound by all terms of the Settlement and any Final Approval Order entered
25 by the Court if the Settlement becomes effective.

26 3.9.6 Requests for Exclusion (Opt-Outs). The Notice of Settlement shall state
27 that Class Members who wish to exclude themselves from the Settlement must submit a written
28 Request for Exclusion to the Settlement Administrator by the Response Deadline. To be valid, the

1 Request for Exclusion: (1) must contain the full name, address and last four digits of the social
2 security number of the person requesting exclusion; (2) must be signed by the person requesting
3 exclusion; and (3) must state, in substance: "I wish to exclude myself from the Settlement in
4 *Shramek v. Marble USA, Inc.*, San Diego Superior Court case number 37-2020-00031880-CU-
5 OE-CTL. I understand that by requesting to be excluded from the Settlement, I will receive no
6 money from the Settlement." If the Request for Exclusion does not contain the information listed
7 in (1)-(3), or is not timely postmarked and returned to the Settlement Administrator at the
8 specified address, it will not be deemed a timely or valid Request for Exclusion from the Class.
9 The date of the postmark on the return mailing envelope shall be the exclusive means used to
10 determine whether a Request for Exclusion has been timely submitted. Any Class Members who
11 submit a timely and valid Request for Exclusion from the Class will not be entitled to any
12 monetary recovery under the Settlement and will not be bound by the terms of the Settlement as it
13 relates to the Released Claims. Any Class Member who submits a timely and valid Request for
14 Exclusion will not have any right to object, appeal, or comment on the Settlement. No later than
15 seven (7) calendar days after the Response Deadline, the Settlement Administrator shall provide
16 Defense Counsel with a complete list of the names of all Class Members who have submitted
17 timely and valid Requests for Exclusion.

18 3.9.7 Objections. The Notice of Settlement shall state that Class Members who
19 wish to object to the Settlement must submit a written Notice of Objection to the Settlement
20 Administrator by the Response Deadline. The Settlement Administrator shall forward any Notices
21 of Objection received to counsel for the Parties. To be valid, the Notice of Objection: (1) must
22 contain the full name, address and last four digits of the social security number of the Class
23 Member; (2) must be signed by the Class Member; (3) must state the case name and number,
24 *Shramek v. Marble USA, Inc.*, San Diego Superior Court case number 37-2020-00031880-CU-
25 OE-CTL.; and (4) must state the basis for the objection and state whether the Class Member or
26 his/her representative intends to appear at the Final Approval Hearing. If the Notice of Objection
27 does not contain the information listed in (1)-(4), or is not filed or timely postmarked and returned
28 to the Settlement Administrator at the specified address, it will not be deemed a timely or valid

1 Notice of Objection to this Settlement. As applicable, the date of the filing or the date of the
2 postmark on the return mailing envelope shall be the exclusive means used to determine whether
3 a Notice of Objection has been timely submitted. Class Members who fail to file or submit a
4 timely and valid Notice of Objection shall be deemed to have waived any objections. Class
5 Members who file or submit a timely and valid Notice of Objection will have a right to appear at
6 the Final Approval Hearing to have their objections heard by the Court. Class Members who
7 timely submit both a Notice of Objection and a Request for Exclusion will be deemed to have
8 excluded themselves and their Notice of Objection shall not be considered.

9 3.9.8 No Solicitation of Exclusions or Objections. The Parties agree to use their
10 best efforts to carry out the terms of this Settlement. At no time shall the Parties or their counsel
11 seek to solicit or otherwise encourage Class Members to submit a Notice of Objection or to
12 Request for Exclusion from the Settlement or to appeal from the Court's Final Approval Order.
13 Class Counsel shall not represent Class Members with respect to any objections or appeals to this
14 Settlement.

15 3.9.9 Option to Terminate Settlement. If, before the Final Approval Hearing,
16 more than five percent (5%) of Class Members have submitted timely and valid Requests for
17 Exclusion, Defendant shall have, in its sole discretion, the option to terminate this Settlement. In
18 the event Defendant elects to so terminate this settlement, Defendant shall be responsible for the
19 costs of the Settlement Administrator incurred between the date this Settlement Agreement was
20 executed and the date of the termination of the Settlement Agreement.

21 3.9.10 Declaration in Support of Final Approval. No fewer than twelve (12)
22 calendar days prior to the Final Approval Hearing, the Settlement Administrator shall provide the
23 Parties with a statement detailing the actions taken by the Settlement Administrator to administer
24 the Settlement to date, along with all incurred and anticipated Settlement Administration Costs,
25 and shall provide any additional information as the Parties' desire.

26 3.9.11 Final Approval Hearing. The Court shall hold a Final Approval Hearing,
27 where objections, if any, may be heard and the Court shall determine whether the Settlement
28 should be finally approved, and if so, the amounts payable for: (1) Individual Settlement

1 Payments; (2) the PAGA Award; (3) Plaintiff's Service Award; (4) the Class Counsel Fees
2 Award; (5) the Class Counsel Costs Award; and (6) Settlement Administration Costs. Class
3 Counsel shall prepare and file any moving papers necessary to secure Final Approval of this
4 Settlement, but shall provide a draft of the same to Defense Counsel for review and comment at
5 least five (5) calendar days before filing such papers.

6 3.9.12 Entry of Final Approval Order. If the Court approves this Settlement at
7 the Final Approval Hearing, Class Counsel shall request that the Court enter a Final Approval
8 Order and shall obtain a Judgment from the Court. The Judgment shall, among other things, (a)
9 find that the Court has personal jurisdiction over all Class Members and that the Court has subject
10 matter jurisdiction to approve the Agreement; (b) approve the Agreement as fair, reasonable, and
11 adequate to, and in the best interests of the Class Members, direct the parties to implement and
12 consummate the Agreement according to its terms; (c) find that the Notice provisions continued
13 herein are reasonably calculated to apprise the Class Members of the pendency of the action, the
14 terms of this Agreement, their right to object or exclude themselves, that the notice provisions are
15 reasonable and constitute due, adequate, and sufficient notice to all Class Members; (d) find that
16 the Class Representative and Class Counsel fairly and adequately represented the Class for the
17 purpose of this Agreement; (e) incorporate the Releases set forth herein, and forever discharge the
18 Released Parties as set forth herein; (f) permanently bar and enjoin all Class Members who have
19 not been excluded from the Class, from filing, commencing, prosecuting, or participating in any
20 lawsuit or other action, in any jurisdiction, based on the Released Claims, and bar and enjoin the
21 LWDA or any allegedly aggrieved employees from pursuing or participating in any claim for
22 penalties under the PAGA based on the same. After granting final approval of the Settlement and
23 entering judgment, the Court shall retain jurisdiction over the Parties to enforce and implement
24 the terms of the judgment.

25 3.10 Funding and Allocation of Settlement.

26 3.10.1 Settlement Accounting. No more than five (5) calendar days after the
27 Effective Date, the Settlement Administrator shall provide the Parties with an accounting of all
28 anticipated payments from the Settlement Fund Account, including: (1) Individual Settlement

1 Payments; (2) the PAGA Award; (3) Plaintiff's Service Award; (4) the Class Counsel Fees
2 Award; (5) the Class Counsel Costs Award; (6) Settlement Administration Costs; and (7) Payroll
3 Taxes, all as specified in this Settlement Agreement and approved by the Court.

4 3.10.2 Funding the Settlement. No later than ten (10) calendar days following the
5 Effective Date of the Settlement, Defendant shall fund the Settlement by providing the Total
6 Settlement Amount to the Settlement Administrator. The Settlement Administrator shall deposit
7 the funds in the Settlement Fund Account and will disburse the funds in the manner and at the
8 times set forth in this Agreement.

9 3.10.3 Individual Settlement Payments. Individual Settlement Payments will be
10 paid from the Net Distribution Fund and mailed by First Class U.S. Mail to Class Members' last
11 known mailing address within thirty (30) calendar days following the Effective Date of the
12 Settlement. Any checks issued to Class Members shall remain valid and negotiable for one
13 hundred eighty (180) calendar days from the date of their issuance and shall become void on the
14 181st day after mailing, *i.e.*, the Void Date. The Parties agree that any unclaimed funds as a result
15 of the failure to cash Individual Settlement Payment checks by the Void Date shall escheat to the
16 California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of
17 the Class Member.

18 3.10.4 Calculation of Individual Settlement Payments. All Class Members who
19 do not submit a timely and valid Request for Exclusion will receive an Individual Settlement
20 Payment. Class Members are not eligible to receive any compensation other than an Individual
21 Settlement Payment. The Individual Settlement Payment shall be calculated and apportioned
22 based on the Workweeks each Class Member worked during the Class Period in proportion to the
23 total number of Workweeks worked by all Class Members during the Class Period. The
24 Settlement Administrator shall calculate and deduct from those amounts the employee's share of
25 any applicable taxes and/or other required withholdings, and then will pay the resulting amount to
26 Class Members in the manner set forth herein.

27 3.10.5 Accompanying the Individual Settlement Payment check will be a letter
28 explaining the following:

1 “Your signature on the enclosed check constitutes a full and
2 complete release of Marble USA, Inc. and all other Released Parties
3 of all claims alleged in, relating to, or arising out of the class action
4 lawsuit, as more fully set forth in the Settlement Agreement. By
5 signing and cashing the enclosed check, you consent to join the
6 lawsuit as a Class Member and release any claims asserted against
7 the Released Parties based on the Released Claims, including any
8 claims based on alleged failure to provide rest breaks, failure to
9 provide meal breaks, failure to pay overtime compensation, failure
10 to provide accurate itemized wage statements, failure to pay wages
11 at termination, violation of California’s Unfair Competition Law,
12 Bus. & Prof. Code section 17200 *et seq.*; and civil penalties under
13 the Private Attorneys General Act.”

14 3.10.6 Tax Treatment of Individual Settlement Payments. Each Individual
15 Settlement Payment shall be allocated as follows: twenty percent (20%) will be considered wages
16 subject to withholding of all applicable local, state and federal taxes, and eighty percent (80%)
17 will be allocated as interest and remedial penalties pursuant to the Labor Code, from which no
18 taxes will be withheld. The Settlement Administrator will issue to each Class Member an IRS
19 Form W-2 and any comparable state tax forms with respect to the wage allocation, and an IRS
20 Form 1099 with respect to the penalties and interest allocation.

21 3.10.7 Administration of Taxes by Settlement Administrator. The Settlement
22 Administrator shall be responsible for issuing to the Class Representative, Class Members, and
23 Class Counsel any W-2, 1099 or other tax forms as may be required by law for all amounts paid
24 pursuant to this Agreement. The Settlement Administrator shall also be responsible for
25 forwarding the Payroll Taxes and any applicable withholdings/deductions to the appropriate
26 governmental authorities.

27 3.10.8 Tax Liability. Defendant and Class Counsel make no representation as to
28 the tax treatment or legal effect of the payments called for hereunder, and the Class
Representative and Class Members are not relying on any statement, representation, or
calculation by Defendant, Defense Counsel, Class Counsel, or the Settlement Administrator in
this regard. The Class Representative and Class Members understand and agree that, except for
the Settlement Administrator’s payment of any applicable payroll taxes, the Class Representative
and Class Members will be solely responsible for reporting and paying any taxes or penalties
assessed based on the payments described herein.

1 3.10.9 PAGA Award. The Settlement Administrator shall prepare and mail a
2 check payable to the California Labor & Workforce Development Agency for seventy-five
3 percent (75%) of the PAGA Award within thirty-five (35) days of the Effective Date of this
4 Agreement. The remaining twenty-five percent (25%) of the PAGA Award shall be included
5 within the Net Distribution Fund for distribution to Class Members as part of the “penalties”
6 component of the Individual Settlement Payment. In the event the Court awards less than the full
7 amount requested for the PAGA Award, the difference between the amount requested and
8 awarded will be made available for distribution to Class Members as part of the Net Distribution
9 Fund.

10 3.10.10 Class Representative Service Award. Defendant agrees not to oppose any
11 application by the Class Representative for a Service Award not to exceed Twelve Thousand
12 Dollars (\$12,000) as consideration for her Complete and General Release of Claims and for her
13 time and effort in prosecuting this matter. Any Service Award approved by the Court shall be
14 paid to the Class Representative within thirty-five (35) calendar days following the Effective Date
15 of the Settlement out of the Total Settlement Amount. The Class Representative agree to provide
16 the Settlement Administrator with an updated IRS Form W-9 before the Service Award, if any, is
17 issued. The Settlement Administrator shall issue an IRS Form 1099 to the Class Representative
18 for this payment. The Class Representative shall be solely and legally responsible for paying any
19 and all applicable taxes on her Service Awards and shall hold Defendant harmless from any claim
20 or liability for taxes, penalties, or interest arising as a result of the Service Award. The Service
21 Award shall be in addition to the Class Representative’s Individual Settlement Payment. In the
22 event the Court awards less than the full amount requested for the Service Award, the difference
23 between the requested amount and the awarded amount will be made available for distribution to
24 Class Members as part of the Net Distribution Fund. The Class Representative shall not have the
25 right to revoke her agreement to the Settlement on the grounds the Court does not approve any or
26 all of the requested Service Award.

27 3.10.11 Class Counsel Fees Award and Class Counsel Costs Award. Defendant
28 agrees not to oppose any application by Class Counsel for a Class Counsel Fees Award not to

1 exceed Thirty-Five percent (35%) of the Total Settlement Amount (estimated to be Three
2 Hundred Fifty Thousand Dollars [\$350,000]). Defendant further agrees not to oppose any
3 application by Class Counsel for a Class Counsel Costs Award not to exceed Twelve Thousand
4 Dollars (\$12,000). The Class Counsel Fee Award and Class Counsel Costs Award shall be
5 deemed to cover all work performed, costs, and expenses related to the investigation, prosecution,
6 and settlement of the Action incurred through the Effective Date and distribution date. The
7 Settlement Administrator shall pay any Court-approved Class Counsel Fees Award and Class
8 Counsel Costs Award within thirty-five (35) calendar days following the Effective Date of the
9 Settlement out of the Total Settlement Amount. Class Counsel agrees to provide the Settlement
10 Administrator with an executed IRS Form W-9 before the Class Counsel Fees Award and Class
11 Counsel Costs Award are issued. The Settlement Administrator shall issue an IRS Form 1099 to
12 Class Counsel for the payments made pursuant to this Paragraph. In the event the Court awards
13 less than the full amount requested for the Class Counsel Fees Award and Class Counsel Costs
14 Award, the difference between the requested amount and the awarded amount will be made
15 available for distribution to Class Members as part of the Net Distribution Fund. This Settlement
16 is not contingent upon the Court's decision to award Class Counsel any particular amount, or any
17 amount, in connection with Class Counsel's attorneys' fees or costs.

18 3.11 Settlement Administration Costs. The Settlement Administration Costs shall be
19 paid to the Settlement Administrator from the Total Settlement Amount, in an amount currently
20 estimated not to exceed Twenty Five Thousand Five Hundred Dollars (\$25,500.00). The
21 Settlement Administration Costs shall be paid the Settlement Administration Costs within thirty-
22 five (35) calendar days following the Effective Date of the Settlement out of the Total Settlement
23 Amount. In the event the Court awards less than the Settlement Administration Costs outlined
24 herein, the difference between the requested amount and the awarded amount will be available for
25 distribution to Class Members as part of the Net Distribution Fund.

26 3.12 No Effect on Employee Benefits. Amounts paid to Plaintiff, the Class
27 Representative, or Class Members pursuant to this Settlement Agreement do not count as
28 earnings or compensation for purposes of any benefits provided or sponsored by Defendant.

1 3.13 Nullification of Settlement Agreement. In the event: (1) the Court does not enter
2 the Preliminary Approval Order as provided herein; (2) the Court does not enter a Final Approval
3 Order as provided herein; or (3) the Settlement does not become final, for any other reason, this
4 Settlement Agreement shall be null and void, and any order entered by the Court in furtherance of
5 this Settlement shall be treated as void from the beginning. In such case, any funds to be awarded
6 under this Settlement shall be returned to their respective statuses as of the date and time
7 immediately prior to the execution of this Settlement Agreement, and the Parties shall proceed in
8 all respects as if this Settlement Agreement had not been executed, except that any Settlement
9 Administration Costs already incurred by the Settlement Administrator shall be paid by the
10 Parties in equal shares. In the event an appeal is filed from the Court's Final Approval Order or
11 from an order rejecting any motion to intervene, or any other appellate review is sought, the
12 administration of the settlement shall be stayed pending final resolution and Defendant will not be
13 required to fund this Settlement until and unless the Effective Date is reached.

14 3.14 Exhibits and Headings. The terms of this Settlement Agreement include the terms
15 set forth herein and in the Exhibits attached hereto, which are incorporated by this reference as
16 though fully set forth herein. The descriptive headings of any paragraphs or sections of this
17 Settlement Agreement are inserted for convenience only and do not constitute a part of this
18 Settlement Agreement.

19 3.15 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
20 Action, except such proceedings necessary to implement and complete the Settlement, pending
21 the Final Approval Hearing to be conducted by the Court.

22 3.16 Amendment or Modification. This Settlement Agreement may be amended or
23 modified only by a written instrument signed by Defense Counsel and Class Counsel or their
24 successors-in-interest.

25 3.17 Entire Agreement. This Settlement Agreement and any Exhibits thereto constitute
26 the entire agreement among the Parties, and no oral or written representations, warranties or
27 inducements have been made to any Party concerning this Settlement Agreement or its Exhibit
28

1 other than the representations, warranties and covenants contained and memorialized in the
2 Settlement Agreement and its Exhibits.

3 3.18 Authorization to Enter into Settlement Agreement. Defense Counsel and Class
4 Counsel warrant and represent they are expressly authorized by the Parties whom they represent
5 to negotiate this Settlement Agreement and to take all appropriate actions required or permitted to
6 be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person
7 or persons signing this Settlement Agreement on behalf of Defendant represents and warrants that
8 he/she/they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff
9 represents and warrants that she is authorized to sign this Settlement Agreement and that she has
10 not assigned any Claims covered by this Settlement Agreement to any persons or third-parties.
11 The Parties and their counsel agree to cooperate with each other fully and to use their best efforts
12 to effectuate the implementation of the Settlement Agreement. Such cooperation includes, but is
13 not limited to, execution of such other documents and the taking of such other actions as may be
14 reasonably necessary to fulfill the terms of this Settlement Agreement. In the event the Parties are
15 unable to reach agreement on the form or content of any document needed to implement the
16 Settlement Agreement or on any supplemental provisions that may become necessary to
17 effectuate the terms of this Settlement Agreement, the Parties may seek the assistance of the
18 Court to resolve such disagreement.

19 3.19 Binding on Successors and Assigns. This Settlement Agreement shall be binding
20 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
21 defined.

22 3.20 California Law Governs. All terms of this Settlement shall be governed by and
23 interpreted according to the laws of the State of California.

24 3.21 Invalidity of Any Provision. Before declaring any provision of this Settlement
25 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest
26 extent possible consistent with applicable precedent so as to define all provisions of this
27 Settlement Agreement as valid and enforceable.
28

3.22 Publicity. The Class Representative and Class Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any inquiry from the press about this case, or otherwise publicize this Action or the Settlement, the facts of this Action or the Settlement.

3.23 Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be made: (1) in writing; (2) deemed given on the third business day after mailing; and (3) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff and/or the Class:	To Defendant:
Daniel F. Gaines, Esq. Alex P. Katofsky, Esq. Evan S. Gaines, Esq. GAINES & GAINES, APLC 27200 Agoura Rd., Suite 101 Calabasas, CA 91301	Edwin M. Boniske, Esq. Kyle Nageotte, Esq. HIGGS FLETCHER & MACK LLP 401 West "A" Street, Suite 2600 San Diego, CA 92101

3.24 Execution by Class Members. The Parties agree that it is impossible and/or impractical to have each Class Member execute this Settlement Agreement. The Notice of Settlement will therefore advise all Class Members of the binding nature of the Settlement and its Released Claims, which release shall have the same force and effect as if each Class Member executed this Settlement Agreement individually (excepting only those Class Members who return a timely and valid Request for Exclusion).

3.25 Execution by Class Representative. The Class Representative, by signing this Settlement Agreement, is bound by the terms herein and further agrees not to submit any Request for Exclusion from or Notice of Objection to the Settlement. Any such Request for Exclusion or Notice of Objection from the Class Representative shall be void and of no force or effect.

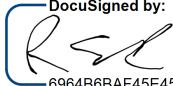
3.26 Counterparts. This Settlement Agreement shall become effective upon its execution by all of the undersigned. The Agreement may be executed counterparts, which shall have the same force and effect as if each had signed the same instrument. Copies of the executed

Settlement Agreement shall be effective for all purposes as though the signatures contained therein were original signatures.

IT IS SO AGREED:

April 28, 2021

DATED: April __, 2021

DocuSigned by:

6964B6BAF45E451...
Rosie Shramek

DATED: April 28, 2021


Marble USA, Inc.

APPROVED AS TO FORM:

DATED: April 28, 2021

GAINES & GAINES, APLC

By: Daniel F. Gaines
DANIEL F. GAINES, ESQ.
ALEX P. KATOFISKY, ESQ.
EVAN S. GAINES, ESQ.

Attorneys for Plaintiff Rosie Shramek and the Class

DATED: April 28, 2021

HIGGS FLETCHER & MACK LLP

By: 
EDWIN M. BONISKE, ESQ.
KYLE NAGOETTE, ESQ.

Attorneys for Defendant Marble USA, Inc.