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on behalf of himself and all others similarly situated,

Additional Plaintiffs' Counsel on Next Page

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

JONATHAN ELIAS, on behalf of himself
and all other similarly situated aggrieved
employees,

Plaintiffs,

v.

TMONE, LLC d/b/a "Mass Markets, Inc.," a
Delaware limited liability company;
MARLOWE COMPANIES INC. also
known as "MCI" d/b/a "Mass Markets,
Inc.," a California entity, form unknown;
and DOES 1 to 10, inclusive,

Defendants.

CLASS ACTION

Case No.: 37-2022-00032324-CU-OE-CTL

**DECLARATION OF KEVIN T. BARNES
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Preliminary Approval Hearing:

Date: June 28, 2024

Time: 8:30 a.m.

Dept: C-74

Honorable Blaine K. Bowman
Department C-74

Action filed: August 12, 2022
Trial Date: None Set

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By Andrea Naranjo, Deputy Clerk

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behalf of herself and all others similarly situated

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1 **DECLARATION OF KEVIN T. BARNES IN SUPPORT OF PLAINTIFFS'**
2 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA**
3 **SETTLEMENT**

4 I, Kevin T. Barnes, declare:

5 1. I am an attorney licensed to practice before all courts of the State of California. I
6 am co-counsel for the Plaintiffs Jonathan Elias and Gracie Rodriguez (hereinafter "Plaintiffs")
7 and have personal knowledge of the facts thereto. If called as a witness, I could and would
8 competently testify herein.

9 **SETTLEMENT DOCUMENTS**

10 2. Attached are the following settlement documents:

- 11 a. Joint Stipulation of Class Action and PAGA Settlement and Release
12 attached hereto as **Exhibit 1** (Declarant will file the fully executed
13 document when it is fully executed);
14 b. Notice of Class Action Settlement attached hereto as **Exhibit 2**; and
15 c. [Proposed] Order Granting Plaintiffs' Motion For Preliminary Approval
16 Of Class and Representative Action Settlement attached hereto as
17 **Exhibit 3** and also filed concurrently with this motion.

18 **NUMEROSITY**

19 3. Defendants have identified approximately 319 employees who fit the class
20 definition. As such the Class is 100% ascertainable based on Defendants' employment records
21 and are numerous under any legal standard, therefore satisfying the Numerosity requirements in
22 California pursuant to California Code of Civil Procedure §382.

23 **COMMON QUESTIONS OF LAW AND FACT PREDOMINATE**

24 4. Plaintiffs believe that there are common questions of law and fact as to the Class
25 which predominate over questions affecting only individual members including, without
26 limitation, to:

- 27 a. Whether Defendants failed to pay all overtime wages at the appropriate overtime
28 pay rate;

- b. Whether Defendants failed to pay all minimum and overtime wages due to off the clock work;
- c. Whether Defendants failed to separately pay for all rest periods;
- d. Whether Defendants failed to provide legally compliant meal periods and payments for violations, pursuant to Labor Code §226.7;
- e. Whether Defendants failed to provide legally compliant rest periods and payments for violations, pursuant to Labor Code §226.7;
- f. Whether Defendants derivatively and independently failed to timely furnish legally compliant wage statements due to the unlawful rounding and meal and rest policies as required by Labor Code §226(a);
- g. Whether Defendants failed timely pay all wages due upon separation of employment as required by Labor Code §203;
- h. Whether the members of the Class are entitled to penalties pursuant to Labor Code §§2698, et seq.;
- i. Whether Defendants subjected hourly employees to unlawful, unfair and/or fraudulent business acts/practices in the form of its unlawful policies in violation of Business & Professions Code (“B&PC”) §17200 *et seq.*;
- j. Whether the members of the Class are entitled to compensatory damages, and if so, the means of measuring such damages;
- k. Whether the members of the Class are entitled to restitution; and
- l. Whether Defendants are liable for attorneys’ fees and costs.

Defendants, while not admitting that there are common questions of law and fact sufficient to justify a litigation class, acknowledge the risk that such common questions might be found, and agree that there are sufficient common questions to support creation of the Settlement class.

THE CLASS REPRESENTATIVES ARE TYPICAL AND ADEQUATE

5. The claims of the Class Representative are typical of the Class Members. The proposed Class Representatives are adequate Class Representatives because they will

adequately and fairly represent the Class and will not place their interests above any Member of the Class. The Class Representatives worked as hourly-paid non-exempt Call Center employees employed by the Defendants in the state of California during the relevant time period and, therefore, worked under the same policies and procedures and was paid according to the same pay plan for the entire period, as all other Class Members.

FAIR & REASONABLE SETTLEMENT

6. This case was settled through arms-length negotiation. Class Counsel submits that the settlement amount recoverable for each Class Member in the Class as set forth in the Memorandum of Points and Authorities is fair and reasonable based on a review of all objective evidence. The settlement that has been reached, subject to this Court's approval, is the product of tremendous effort, and a great deal of expense by the Parties and their counsel.

The settlement was reached after factual and legal research, formal discovery including propounding and responding to written interrogatories, and the production of documents. The parties attended a full-day of mediation on February 28, 2024 before Gail A. Glick, Esq. Although the parties did not settle at this mediation, the parties continued settlement conversations through the mediator. The mediator subsequently made a mediator's proposal that both parties accepted. To prepare for the mediation, Defendants provided extensive documentation and data related to the claims asserted in this case as well as a number of workweeks, class sizes and other necessary information for Plaintiffs to create a damage exposure analysis. Plaintiffs hired an expert economist to prepare damage calculations and an exposure analysis for the mediation.

Class Counsel are knowledgeable about and have done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Based on the discovery, litigation, documents and information provided by Defendants, and its own independent investigation and evaluation, Class Counsel and Plaintiffs are of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and

1 uncertainty associated with litigation, various defenses asserted by Defendants, and numerous
2 potential appellate issues.

3 7. The settlement amount is, of course, a compromise figure. Plaintiffs took into
4 account the risks related to proof of Plaintiffs' claims and the strengths and weaknesses of
5 Defendants' other defenses. Plaintiffs also took into account the possibility that if a settlement
6 were reached after additional years of litigation, the great expenses and attorneys' fees of
7 litigation would reduce the amount of funds available to the Class Members for settlement.
8 Furthermore, Plaintiffs also took into consideration the time delay and financial repercussions
9 of trial and the possibility of an appeal by Defendants.

10 The parties in this matter have agreed to the settlement amount of \$280,000 on a class
11 wide basis with no claims form requirement and with no residual to revert to Defendants.

12 8. This declaration is presented to comply with Kullar v Foot Locker Retail, Inc.
13 (2008) 168 Cal.App.4th 116, 120, 129, 132, Clark v. American Residential Services LLC (2009)
14 175 Cal.App.4th 785, Munoz v. BCI Coca-Cola Bottling Company of Los Angeles (2010) 186
15 Cal.App.4th 399, Nordstrom Commission Cases (2010) 186 Cal.App.4th 576. I am providing
16 evidence to enable the Court to "ensure that the recovery represents a reasonable compromise"
17 by providing "an understanding of the amount that is in controversy and the realistic range of
18 outcomes of the litigation" through submission of "data... that will enable the court to make an
19 independent assessment of the adequacy of the settlement terms." Kullar, supra, 168
20 Cal.App.4th at 120,129.

21 **9. Exposure analysis:**

22 Plaintiffs made the following claims in this case and their exposure is discussed below.

23 **A. Failure to Pay Overtime at the Appropriate Overtime Pay Rate**

24 **1. Facts**

25 Plaintiffs contend that Defendants paid Plaintiffs and putative class members "Contest
26 Bonuses" and/or "Weekly Production Bonuses." If these payments are in fact a commission or
27 bonus, Defendants did not correctly consider these additional payments in the computation of
28 the regular rate of pay to determine the legal overtime pay for class members pursuant to

1 Alvarado v. Dart Container Corp. of California (2018) 4 Cal.5th 542. Here, although Defendants
2 claim that the extra pay is a commission, it is not a commission because Plaintiff Elias was not
3 paid a percentage of any sale and, therefore it is actually a piece-rate payment. Plaintiff Elias
4 was provided an April 2020 “LifeLock Sales Team Weekly Production Bonus” sheet that shows
5 a flat-rate amount (called a “Production Bonus”) for a sale of each of the LifeLock products
6 which they are required to sell. This flat-rate payment for each product sale corresponds with
7 Plaintiff Elias’ “Bonus Tracking Report.” Under both the Production Bonus sheet and Bonus
8 Tracking Report, this shows that Plaintiff Elias would earn a fixed dollar amount for each sale
9 (for example \$2.50 for each sale of “LifeLock Advantage” or “Advantage Annual” or \$3.50 for
10 each “LifeLock Ultimate Plus” or “Ultimate Plus Monthly” subscription that he sold). As seen
11 on Plaintiff Elias’ October 18, 2021 wage statement, Defendants’ payment of overtime on his
12 \$38.50 “Commission” uses the standard overtime method rather than the formula required in
13 California under Alvarado. Likewise, the \$100 “Contest Bonus” payment Plaintiff received on
14 his November 1, 2021 wage statement is also clearly a piece rate, and subject to the Alvarado
15 formula. Here, Defendants used the standard overtime formula instead, resulting in an
16 underpayment of \$12.13 for that period.

17 2. Law

18 Under general California law, employers must pay overtime wages at time-and-a-half
19 the regular rate of pay for all overtime hours worked. For California employees, “overtime” is
20 all work time over eight hours in a day and over forty hours worked in a week. Thus, overtime
21 is calculated by multiplying the overtime hours worked by the “regular rate” of pay (a term of
22 art). The foremost principle of the regular rate is that it includes *all remuneration*.
23 However, if the extra payment is for a flat sum bonus, the divisor for purposes of calculating the
24 per-hour value of the bonus should be the number of non-overtime hours the employee worked
25 during the pay period, rather than the number of hours the employee actually worked during the
26 pay period, including overtime hours. Alvarado v. Dart Container Corp. of California (2018) 4
27 Cal.5th 542. The Court in Alvarado dealt with an “attendance bonus” and the amount of the bonus
28 was the same regardless of the number of hours the plaintiff worked. Likewise, here the bonuses

are not tied to hours worked but simply the number of units sold each pay period. Defendants did not calculate the overtime rate using 40 hours as the divisor so the overtime rate is underpaid in each pay period.

3. Exposure

Based on the data provided by Defendants, Plaintiffs estimate the total exposure for this claim is approximately **\$3,702**. Class Counsel thought they had a 90% probability of prevailing at the time of class certification on this claim as there are pay records to prove this claim and case law is very clear. The real risk factor here is simply the general risks of class certification and trial. **As such, Plaintiffs felt that the real exposure for this claim was approximately \$3,331 based on these risks.**

B. Failure to Pay All Minimum and Overtime Wages Due to Off-the-Clock Work

1. Facts

Plaintiffs allege that they and other employees regularly were required to perform work tasks off-the-clock, including before their scheduled shift, during meal periods, and after their scheduled shift. Some of this off-the-clock work should have been paid at the overtime rate as it would occasionally result in class members' workdays exceeding eight hours. Plaintiff Rodriguez alleges she was required to continue to do her normal work duties, including making phone calls and cleaning her work station, after clocking out at the end of her shift because Defendants required discouraged any deviation from employees' schedules. During her meal periods, Plaintiff Rodriguez would be interrupted by her supervisor to respond to work-related questions and would sometimes clock out at her scheduled meal period time, but continue working in order to keep up with quotas she was required to fulfill. All of these work-related tasks were done off-the-clock.

2. Law

Under California law, any time an employee spends subject to an employer's control is compensable. (*See, e.g., Frlekin v. Apple Inc.* (2002) 8 Cal.5th 1038, 1047, reh'g denied (May 13, 2020); *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 583.) California law has long required that all employees must be paid wages for all hours worked. "When an employer

1 directs, commands or restrains an employee from leaving the workplace... and thus prevents the
2 employee from using the time effectively for his or her own purposes, that employee remains
3 subject to the employer's control" and "must be paid." (Mendiola v. CPS Sec. Solutions, Inc.
4 (2015) 60 Cal.4th 833, 840, citing Morillion, 22 Cal.4th at p. 583 holding that the time spent
5 traveling to and from work sites on employer-provided buses was compensable].) Although the
6 performance of certain tasks off-the-clock may seem minimal, "California wage-and-hour law
7 'is indeed concerned with 'small things.'"' (Troester v. Starbucks Corp. (C.D. Cal. 2019) 387
8 F.Supp.3d 1019, 1030, order clarified on reconsideration, No. CV1207677CJCPJWX, 2019 WL
9 2902487 (C.D. Cal. May 21, 2019), citing Troester v. Starbucks Corp. (2018) 5 Cal.5th 829,
10 844, as modified on denial of reh'g (Aug. 29, 2018).) In fact, "when aggregated over time and
11 added to [] other [] tasks," "the time [spent working off-the-clock] is not entirely insignificant."
(Troester, 387 F.Supp.3d at p. 1030.)

12 Courts applying *Morillion* have also had no difficulty holding that all time "during
13 which" an employer exercises "control" is compensable—notwithstanding the employees'
14 supposed ability to "choose" to "avoid" it. See, e.g., Bono Enters., Inc. v. Bradshaw (1995) 32
15 Cal.App.4th 968, 972, 974-75; Ridgeway v. Wal-Mart Stores, Inc. (N.D. Cal. 2015) 107
16 F.Supp.3d 1044, 1054-55.) Consistent with the broadly accepted construction of *Morillion*, the
17 California Supreme Court, in *Mendiola*, recognized that time during which security guards were
18 required to remain on site was "controlled" under *Morillion*, even though the guards could have
19 avoided this "control" by requesting permission "to leave the worksite." (Mendiola, *supra*, 60
20 Cal.4th at p. 841.) The court reached this conclusion because, under the Wage Orders, "the
21 extent" or "level" "of the employer's control" during the time in question is what is
22 "determinative." (Id. at p. 840, quoting Morillion, 22 Cal.4th at p. 587.)

23 Should other class members provide testimony that is consistent with Plaintiffs with
24 respect to off-the-clock work, the burden shifts to Defendants to provide the actual amount of
25 unpaid wages. That is the same conclusion the Court of Appeal reached in ABM Industries
26 Overtime Cases when it held:

27 Indeed, although we do not reach the issue, the trial court's concern regarding
28 the need for numerous individualized damage inquiries in this case may turn out

1 to be over-exaggerated, given existing precedent indicating that the burden of
2 proof shifts to employers “in the wage and hour context when an employer’s
3 compensation records are so incomplete or inaccurate that an employee cannot
4 prove his or her damages.” (*Amaral v. Cintas Corp. No. 2* (2008) 163
5 Cal.App.4th 1157, 1189, 78 Cal.Rptr.3d 572; see also *Cicairos v. Summit*
6 *Logistics, Inc.* (2005) 133 Cal.App.4th 949, 961, 35 Cal.Rptr.3d 243 (*Cicairos*)
7 [“Where the employer has failed to keep records required by statute, the
8 consequences for such failure should fall on the employer, not the employee. In
9 such a situation, imprecise evidence by the employee can provide a sufficient
10 basis for damages.”].)

11 (*Id.* at p. 311.) Accordingly, Defendants face substantial liability related to its failure to pay
12 wages for all work performed, including work eligible for overtime pay.

13 3. Exposure

14 Based on the time punch versus payroll data provided by Defendants, Plaintiffs estimate
15 the employees worked 5 minutes off the clock per shift and thus the total exposure for this claim
16 is approximately **\$71,144**. Counsel thought they had a 20% probability of prevailing on this
17 claim through class certification and trial as there are no records to prove this claim and
18 Defendant has a written policy prohibiting off the clock work. Plaintiffs also need to consider
19 general trial risks. **As such, Plaintiffs felt that the real exposure for this claim was**
20 **approximately \$14,228 based on these risks.**

21 C. Failure to Separately Pay for All Rest Periods

22 1. Facts

23 As stated above, Plaintiffs allege that the Defendants’ bonus pay is actually a piece rate
24 and not a bonus as employees are paid a set amount rather than a percentage of each sale.
25 Defendants claim that the extra pay is a commission. **If Plaintiffs are right and this is a piece-**
26 **rate payment, this pay plan triggers Labor Code § 226.2, and specifically the need to**
27 **separately compensate for rest break periods at the proper rate of pay.** Plaintiffs allege
28 Defendants failed to pay Plaintiffs and putative class members for rest periods (whether or not
in commissioned pay periods), because Defendants’ piece rate pay plan only pays for
employees’ performance of certain work activities, and therefore does not compensate for duty-
free rest periods in direct violation of Labor Code §226.2(a)(1), Armenta v. Osmose (2005) 135
Cal.App.4th 314, Bluford v. Safeway Stores, Inc. (2013) 215 Cal.App.4th 864, and Vaquero v.

1 Stoneledge Furniture, LLC (2017) 9 Cal.App.5th 98.

2 **2. Law**

3 In Bluford v. Safeway Stores, Inc., (2013) 216 Cal.App.4th 864, the Court held that
4 because rest periods are considered hours worked, and because employees must be compensated
5 for “each hour” worked, “a piece-rate compensation formula that does not compensate
6 separately for rest periods does not comply with California minimum wage law.” *Id.* at 872.

7 On May 24, 2013, the Bluford Court followed the lead of various Federal District Court
8 opinions to hold that California law categorically prohibits “piece rate” compensation policies
9 which fail to separately compensate employees for rest period time:

10 [C]ontrary to Safeway’s argument, a piece-rate compensation formula that
11 does not compensate separately for rest periods does not comply with
12 California minimum wage law. (See Reinhardt v. Gemini Motor Transport
13 (E.D. Cal. 2012) 869 F.Supp.2d 1158, 1168 [piece-rate pay system that did
14 not separately pay truck drivers for non-driving duties violates California law
15 requiring compensation for each hour worked]; Cardenas v. McLane
FoodServices, Inc. (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252 [piece-rate
pay system that did not separately pay truck drivers for non-driving duties
and rest periods violates California law requiring compensation for each hour
worked].) Bluford, *supra*, 216 Cal.App.4th at 872.

16 In reaching this conclusion, the court extended the analysis in Armenta, (i.e., that employers
17 have an obligation to compensate employees for “non-productive” time) to cover “rest period”
18 time, which under subpart 12 of the Wage Orders, cannot result in a “deduction of wages.”
19 Under the Armenta Rule, rest periods must be separately compensated in a piece- rate system.
20 *Id.* at 323. Rest periods are considered hours worked and must be compensated. (Cal. Code
21 Regs., tit. 8, §§11070, subd. 12; 11090, subd. 12.) Boiled to its essence, Bluford stands for the
22 proposition that because rest periods are by definition time that precludes employees from
23 completing the compensable “piece rate” event (i.e. time away from the task, which
24 affirmatively precludes completion of the task), rest period compensation cannot be “lumped-
25 in” as a component of a piece-rate task under California law.

26 **3. Exposure**

27 Based on the data provided by Defendants, Plaintiffs estimate the total exposure for this
28 rest period clam is approximately **\$48,475**. Counsel thought they had a 50% probability of

1 prevailing on this claim as first Plaintiffs have to prevail on their argument that the Defendants'
2 bonus pay is actually a piece rate and not a bonus to trigger Labor Code § 226.2, and
3 specifically the need to separately compensate for rest break periods at the proper rate of pay.
4 Plaintiffs felt confident in this claim but it is not an easy argument. Likewise Plaintiffs have the
5 general risks of trial. **As such, Plaintiffs felt that the real exposure for this claim was**
6 **approximately \$24,237 based on these risks.**

7 **D. Failure To Provide All Meal Periods**

8 **1. Facts**

9 Plaintiffs contend that Defendants failed to timely provide all legally compliant meal
10 breaks to Plaintiffs and aggrieved employees. Here, many of the employees' timeclock records
11 prove that the Defendants did not provide timely full 30-minute meal breaks. Plaintiff
12 Rodriguez alleges that she was interrupted during meal breaks at least three times a week by
13 her supervisor for work-related questions and was asked to cut meal breaks short to return to
14 work by her supervisor.

15 **2. Law**

16 The law states that an employee is entitled to an uninterrupted meal period of not less
17 than 30 minutes prior to exceeding five hours of employment and a second meal for all shifts
18 over 10 hours. See Labor Code §512 and §11 of the IWC Wage Order(s). Labor Code §226.7
19 requires an employer to pay an additional hour of compensation for each meal period the
20 employer fails to provide. Employers must relieve the employees of all duty for the meal period.
21 Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1034.

22 Labor Code §512 provides:

23 An employer may not employ an employee for a work period of more than
24 ten hours per day without providing the employee with a second meal
period of not less than thirty minutes....

25 Labor Code §226.7(a) provides:

26 No employer shall require any employee to work during any meal or rest
27 period mandated by an applicable order of the Industrial Welfare
Commission.

28 ///

1 California IWC Wage Order 4, §11(D) provides that if an employer fails to provide an
2 employee a meal period in accordance with the applicable provisions of this order, the employer
3 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
4 each workday that the meal period is not provided.

5 Pursuant to these laws, the members of the Meal Period Class are entitled to damages in
6 an amount equal to one (1) hour of wages per missed meal period, in a sum to be proven at trial.

7 Further, IWC Wage Order 4, §7(A) governs record-keeping and mandates that:

8 Every employer shall keep accurate information with respect to each employee,
9 including the following... (3) time records showing when the employee begins
10 and ends each work period. Meal periods, split shift intervals and total daily
11 hours worked shall also be recorded...

12 The California Supreme Court decision in Donohue v. AMN Services, LLC (2021) 11
13 Cal.5th 58 is directly applicable to this case and supports class certification of this meal period
14 claim. ***Donahue* held that time punch records showing a missed, late or short meal period
15 creates a rebuttable presumption that workers missed their meals and Defendants have
16 the burden of proof to show that no violation has occurred. *Id.* at 76-78.** Additionally,
17 ABM Industries Overtime Cases (2017) 19 Cal.App.5th 277, 310 also found that the failure to
18 pay meal period premiums to be a certifiable issue. (See ABM Industries Overtime Cases
19 (2017) 19 Cal.App.5th 277, 310 ["ABM's apparent uniform practice of never providing
20 premium pay to its employees [for] missed meal breaks, is susceptible to classwide
21 treatment."].)

22 **Defendants also failed to pay any meal period premiums for any meal period
23 violation.**

24 Here, the evidence will demonstrate that Defendants do not take appropriate steps to
25 provide legally compliant meal breaks as class members regularly were not provided full meal
26 breaks, with no meal period premiums paid.

27 **3. Exposure**

28 Based on an analysis of the time punch data provided by Defendants, Plaintiffs estimate
the total exposure for this claim is approximately **\$136,536**. Counsel thought they had a 90%

1 probability of prevailing on this meal period claim as several risk factors exist as follows:
2 Defendants had a valid meal period policy in place which is favorable to Defendants. However,
3 the recent California Supreme Court decision in Donohue v. AMN Services, LLC (2021) 11
4 Cal.5th 58 held that time punch records showing a missed, late or short meal period create a
5 rebuttable presumption that workers missed their meals and Defendants have the burden of
6 proof to show that no violation has occurred. Id. at 76-78. Defendants may be able to overcome
7 this rebuttable presumption and if they do Plaintiffs and the employees will have to establish
8 “why” they did not take a meal break, which can be difficult to prove on a class wide basis at
9 trial. **As such, Plaintiffs felt that the real exposure for this claim was approximately**
10 **\$122,882 based on these risks.**

11 **E. Failure to Authorize and Permit Off Duty Rest Breaks Or Payments For Violations**

12 **1. Facts**

13 Plaintiffs alleges that Defendants failed to provide the Plaintiffs and aggrieved
14 employees with a full ten-minute uninterrupted rest breaks as required by law. Defendants also
15 never paid a rest period penalty for any of these rest period violations.

16 **2. Law**

17 Labor Code § 226.7(b) provides that “[a]n employer shall not require an employee to
18 work during a meal or rest or recovery period mandated under an applicable statute, or
19 applicable regulation, standard, or order of the Industrial Welfare Commission, the
20 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
21 Health.”

22 Labor Code § 516 provides that the Industrial Welfare Commission “may adopt or
23 amend working condition orders with respect to break periods, meal periods, and days of rest
24 for any workers in California consistent with the health and welfare of those workers.”

25 Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and
26 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
27 each work period. The authorized rest period time shall be based on the total hours worked daily
28 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.

1 However, a rest period need not be authorized for employees whose total daily work time is less
2 than three and one-half (3½) hours. Authorized rest period time shall be counted as hours
3 worked for which there shall be no deduction from wages.”

4 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
5 employee a rest period in accordance with the applicable provisions of this order, the employer
6 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for
7 each workday that the rest period is not provided.”

8 See Augustus, supra, 2 Cal. 5th 257 at 269-270:

9 One cannot square the practice of compelling employees to remain at the
10 ready, tethered by time and policy to particular locations or
11 communications devices, with the requirement to relieve employees of all
12 work duties and employer control during 10-minute rest periods...These
obligations are irreconcilable with employees’ retention of freedom to
use rest periods for their own purposes.

13 Finally, the failure to pay such rest period premiums is the proper basis for a certifiable
14 class. Bluford v. Safeway Stores, Inc. (2013) 216 Cal.App.4th 864 and Safeway, Inc. v.
15 Superior Court (2015) 238 Cal.App.4th 1138.

16 3. Exposure

17 Based on the data provided by Defendants, and assuming a 50% violation rate, Plaintiffs
18 estimates the total exposure for this rest period claim is approximately **\$416,820**. Counsel
19 thought they had a 10% probability of prevailing on this claim at class certification and trial
20 based on the fact that Defendants have facially valid stand alone rest period policies and the
21 class members will have to overcome these valid policies. Likewise, there are no time punch
22 records of whether someone took a rest break or not. Plaintiffs also still need to show that a rest
23 break was not taken and “why” it was not taken. The law has a relatively low burden on rest
24 breaks, which is to authorize and permit, and therefore Plaintiffs would have to show that an
25 employee did not take a rest break because Defendants would not allow them. Finally, the
26 general risks of trial always reduces the full exposure of a claim. **As such, Plaintiffs felt that**
27 **the real exposure for this claim was approximately \$41,682 based on these risks.**

28 ///

1 **F. Failure to Timely Furnish Accurate Itemized Wage Statements**

2 **1. Facts**

3 Defendants are required to include certain information on an employee's wage
4 statement. Here, Plaintiffs alleges Defendants issues improper wage statements to Plaintiffs and
5 putative class members because Defendants' wage statement did not contain all requisite
6 information, including the following:

- 7
- The rate of pay for "Overtime" or "Co-efficient OT";
 - 8 • the inclusive dates for the payment of each hourly rate, including "Regular Pay" when a
9 single pay stub has multiple rates of pay for this type of earnings; and
 - 10 • No separate payment for rest period pay.

11 Likewise, if Plaintiffs prevail on any of the underlying claims, they may prevail on the
12 derivative Labor Code §226 claim. Due to Defendants' illegal wage and hour policies as set
13 forth above, all wages earned were not reflected on the wage statements provided by Defendants
14 to Plaintiffs and putative class members.

15 **2. Law**

16 Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at
17 the time of each payment of wages, furnish each of his or her employees, either as a detachable
18 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
19 paid by personal check or cash, an accurate itemized statement in writing showing ... (9) all
20 applicable hourly rates in effect during the pay period..."

21 With regard to the Wage Statement Class, the IWC requires employers to keep accurate
22 records of employee work times and rates of pay. IWC Wage Order 4 §7 confirms the
23 requirements of Labor Code section Labor Code §226(a) as follows:

24 (5) Total hours worked in the payroll period and applicable rates of pay.

25 Both the California Legislature and California courts regard wage statement claims
26 strictly. Cicairos v. Summit Logistics, Inc. (2005) 133 Cal.App.4th 949 states that strict
27 compliance with Labor Code §226(a) is exactly what the Legislature intended. Id. at 955.

28 In violation of this order, Defendants did not pay all overtime at the legal overtime rate
and all sick pay at the legal pay rate.

1 To the extent Defendants will claim that the “injury” prong of Labor Code §226 will
2 require individualized issues, there are several courts which state such matters are proper for
3 certification. The court in Jaimez v. DAIOHS USA, Inc. (2010) 181 Cal. App. 4th 1286
4 (“Jaimez”) noted that “[w]hile there must be some injury in order to recover damages [under
5 §226(e)], a very modest showing will suffice.” In Jaimez, the court did explain that “this
6 lawsuit, and the difficulty and expense [the Plaintiff has] encountered in attempting to
7 reconstruct time and pay records,’ may well be ‘further evidence of the injury’ he has suffered.”
8 *Id.* at 1306. Further, McKenzie v. Fed. Express Corp., 275 F.R.D. 290, 299 (C.D. Cal. 2011),
9 relying on Jaimez, certified the paystub class and the matter ultimately settled on the failure to
10 provide complaint paystubs after Defendant lost summary adjudication. Finally, effective
11 January 1, 2013, injury is presumed. See Labor Code §226(e). Given the January 1, 2013
12 legislation, which changed Labor Code §226 and the current PAGA allegations, Plaintiff need
13 not prove injury at trial. As a result of the amendment, the recent case of Lublin v. The
14 Wackenhut Corp., 5 Cal. App 5th 926, 941 (2016), ruled that this 2013 amendment to Labor
15 Code §226 is retroactive and injury is an objective standard that occurs if an employee cannot
16 figure out their pay from the four corners of the paystub. The Lubin court confirmed that class
17 certification is appropriate in paystubs classes. *Id.*

18 **3. Exposure**

19 Based on the data provided by Defendants, Plaintiffs estimate the total exposure for this
20 claim is approximately **\$325,850**. Counsel thought they had a 10% probability of prevailing at
21 the time of class certification and trial. Plaintiffs’ best fact is the actual paystubs which are
22 objective evidence of the alleged violations. However, Plaintiffs must prove the underlying
23 claims are valid and Plaintiffs must also prove this is a “willful” violation in order to prevail
24 which is a difficult task. Likewise, this is a penalty not a wage loss, and courts rarely grant the
25 full amount of the penalty. Finally, there are the general risks of trial. **As such, Plaintiffs felt**
26 **that the real exposure for this claim was approximately \$32,585 based on these risks.**

27 ///

28 ///

1 **F. Derivative Failure to Pay All Wages When Due**

2 **1. Facts**

3 If Plaintiffs prevail on any of the underlying claims, they will have a chance to prevail
4 on the derivative Labor Code §203 claim.

5 **2. Law**

6 Labor Code §203 provides that if an employer willfully fails to timely pay the wages of
7 separated employees, the wages of the employees shall continue at the same rate, for up to 30
8 days from the due date thereof, until paid or until an action therefore is commenced.

9 If Plaintiffs prove the underlying claims, Defendants will not have paid Class Members
10 all wages due upon their separation from employment with Defendants. The only issue for the
11 Court will be whether the violations were “willful”, which can be determined on a class wide
12 basis.

13 **3. Exposure**

14 Based on the data provided by Defendants, Plaintiffs estimate the total exposure for this
15 derivative claim is approximately **\$1,046,080**. Counsel thought they had a 5% probability of
16 prevailing at the time of class certification and trial on this claim as it is simply derivative of the
17 underlying claims and Plaintiffs must prove the alleged claims before this violation even exists.
18 Likewise, Plaintiffs must prove this is a “willful” violation in order to prevail which is a
19 difficult task. Furthermore, this is a penalty and trial judges rarely if ever grant the full amount
20 of the penalty on top of wages owed. Finally, there are the general risks of trial. **As such,**
21 **Plaintiffs felt that the real exposure for this claim was approximately \$52,304 based on**
22 **these risks.**

23 **G. Penalties Pursuant To Labor Code §2699 (PAGA)**

24 A PAGA action “is a representative action on behalf of the state,” who is the real party
25 in interest. (Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348, 387.) PAGA
26 allows the plaintiff, as an “aggrieved employee,” to serve as a “proxy or agent” of the State of
27 California to recover “civil penalties that otherwise would have been assessed and collected by
28 the Labor Workforce Development Agency (LWDA).” (Arias v. Superior Court (2009) 46

1 Cal.4th 969, 986.) A PAGA claim need not meet class certification requirements. (*Id.* at p. 975.)
2 Unlike class actions, PAGA actions require only a showing that an underlying violation
3 occurred, without resorting to specific damages issues. (See Alcantar v. Hobart Service (C.D.
4 Cal. 2013) 2013 WL 146323, at *4.)

5 Pursuant to Labor Code §2699, et seq., an employee is entitled to a \$100 penalty for the
6 initial pay period and a \$200 penalty for each subsequent violation of the Labor code. Plaintiffs felt
7 that it would be difficult to seek Labor Code §§203 and 226 penalties and on top of that recover
8 PAGA penalties for the alleged wage violations. PAGA penalties awarded are also within the
9 courts discretion as specifically set forth in Labor Code §2699 (e)(2) which states the court may
10 award a lesser amount than the maximum civil penalty specified when the court determines that to
11 do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.
12 Amaral v. Cintas Corporation NO. 2, 163 Cal. App 4th 1157 at 1213-14.

13 Furthermore, the case of Amaral v. Cintas Corporation NO. 2, 163 Cal. App 4th 1157 at
14 1208 states that **an employee is not entitled to a subsequent \$200 PAGA penalty until**
15 **Defendants have “notice” of the previous violation and therefore the maximum PAGA**
16 **penalty would likely only be \$100 per violation.**

17 Likewise, many court decisions provide settlement approval ranges that represent a
18 percentage of the actual *realistic* damages, which do not include penalties and pre-judgment
19 interest. See Glass v. UBS Fin. Servs., Inc., No. C-06-4068 MMC, 2007 WL 221862, at *4
20 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 F. App'x 452 (9th Cir. 2009). In Glass v. UBS Financial
21 Services, the court approved a settlement of unpaid overtime wages where the settlement
22 amount only constituted approximately 25% to 35% of the estimated actual damages to the
23 class. *Id.* at *4; See also Singer v. Becton Dickinson & Co., No. 08-CV-821-IEG(BLM), 2009
24 WL 4809646, at *7 (S.D. Cal. Dec. 9, 2009) (referring to *Glass* in preliminary approving
25 settlement fund which constitutes 28.84% of the claimed actual losses); outside the wage and
26 hour context, see also In re Cendant Corp. Litig., 264 F.3d 201, 241 (9th Cir. 2001) (affirming
27 settlement representing 36% of potential actual damage recovery); Nichols v. Smithkline
28 Beecham Corp., No. 006222, 2005 WL 950616, at *16 (E.D. Pa. April 22, 2005) (approving

1 settlement that represented between 9.3% and 13.9% of the claimed actual damages); In re
2 Warfarin Sodium Antitrust Litig., 212 F.R.D. 231, 258 (D. Del. 2002) (finding settlement
3 amount representing 33% of maximum possible damage recovery was well within a reasonable
4 range when compared with recovery percentages in other class action settlements). Simply put,
5 “the fact that a proposed settlement may only amount to a fraction of the potential recovery does
6 not mean that [it] should be disapproved.” 7-Eleven Owner for Fair Franchising v. Southland
7 Corp., 85 Cal. App. 4th 1135, 1150 (2000), citing Linney v. Cellular Alaska P’ship, 151 F.3d
8 1234, 1242 (9th Cir. 1998)).

9 Additionally, Plaintiffs did not believe the court would award the full value of such
10 PAGA penalties, let alone stack them on top of the 226 and 203 penalties, based on the
11 settlement approval of PAGA awards in other cases. *See, e.g., Franco v. Ruiz Food Prod., Inc.*,
12 No. 1:10-CV-02354-SKO, 2012 WL 5941801, at *14 (E.D. Cal. Nov. 27, 2012) (\$10,000 in
13 PAGA payment from \$2,500,000 settlement fund); Garcia v. Gordon Tracking, 2012 WL
14 5364575, at *3 (E.D. Cal. Oct. 31, 2012) (approving PAGA settlement payment of \$10,000 out
15 of the \$3.7 million common-fund settlement); Chu v. Wells Fargo Investments, LLC, 2011 WL
16 672645, at *1 (N.D. Cal. Feb.16, 2011) (approving PAGA settlement payment of \$7,500 to the
17 LWDA out of \$6.9 million common-fund settlement).

18 Based on the case law cited above, Counsel thought they had a very small chance of
19 having a trial judge award any money for this potential PAGA claim, which is a penalty and in
20 the full discretion of the court. **As such, Plaintiffs felt that the real exposure for this claim**
21 **was negligible at best and as such allocated \$10,000 for this claim.**

22 10. **Based on the above analysis, the total realistic exposure of this case was**
23 **\$301,249. Plaintiffs obtained a settlement of \$280,000. This is 93% of the realistic**
24 **exposure. The average class member will receive a settlement payment of approximately**
25 **\$395 and the highest settlement payment will be approximately \$3,065.** This is fair and
26 reasonable in this case based on the facts and associated risks of this putative class action
27 lawsuit.

28 ///

1 11. Class counsel considers this to be a fair settlement for the Class Members, taking
2 into account all issues and risks related to liability, damages, trial and appeal and
3 also considering the case law regarding fair, reasonable, and adequate settlements. Rebney v.
4 Wells Fargo Bank (1990) 220 Cal.App.3d 1117, 1139 ["Compromise is inherent and necessary
5 in the settlement process...even if the relief afforded by the proposed settlement is substantially
6 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
7 settlement because the public interest may indeed be served by a voluntary settlement in which
8 each side gives ground in the interest of avoiding litigation"]; Officers for Justice v. Civil Serv.
9 Comm'n (9th Cir. 1982) 688 F.2d 615, 628 ["It is well-settled law that a cash settlement
10 amounting to only a fraction of the potential recovery does not . . . render the settlement
11 inadequate or unfair"]; In re Omnivision Technologies, Inc. (N.D. Cal. 2007) 2007 U.S. Dist
12 LEXIS 95616, at 21 [noting that certainty of recovery in settlement of 6% of maximum
13 potential recovery after reduction for attorney's fees was higher than median percentage for
14 recoveries in shareholder class action settlements, averaging 2.2%-3% from 2002 through
15 2006].

16 **ATTORNEY COMPETENCE IN CLASS ACTIONS**

17 12. I graduated from the University of Colorado at Boulder in 1985 with a degree in
18 Business Administration and Real Estate. I graduated from Loyola Law School of Los Angeles
19 in 1988. I am currently the managing partner in The Law Offices of Kevin T. Barnes in Los
20 Angeles. I am admitted to practice before the following Courts: United States Court of Appeal,
21 Ninth Circuit; United States District Court- Northern, Central, and Eastern Districts of
22 California; United States District Court- District of Colorado, United States District Court-
23 Fourth Circuit; all of California State Courts; and the United States Supreme Court. I have an
24 AV rating with Martindale Hubbell.

25 13. In 1997, I was one of the first attorneys in the State of California to represent a
26 in a class action wage and hour case, specifically the case of Amezcuca, et. al. v. Trak Auto
27 Corporation, Los Angeles County Superior Court Case No. BC183900 coordinated with Tett v.
28 Trak Auto Corporation, Los Angeles County Superior Court Case No. BC186931. Since that

1 time, my firm has been hired by many plaintiffs and law firms to serve as class counsel in such
2 cases. Few, if any, attorneys in California are more experienced in wage and hour class action
3 cases than my firm.

4 14. I have been invited on numerous occasions to speak on class action and wage-
5 and-hour employment issues. I have spoken at seminars by the Labor and Employment Section
6 of the Los Angeles County Bar Association, various labor lawyer associations, mediator
7 seminars and Nuts & Bolts seminars for new lawyers. I was selected as one of the Top 10
8 Labor and Employment Attorneys in 2008 by the Daily Journal and the Top 75 Labor and
9 Employment Attorneys in 2017 and 2018 by the Daily Journal. I have been selected as a
10 Southern California Super Lawyer from 2007-2024 in Employment and Labor. This recognition
11 is a selection by my peers based upon ethics, experience and reputation and represents the top
12 5% of our profession. I am also AV rated by Martindale-Hubbell, the highest possible rating for
13 a lawyer.

14 15. In 2008 I tried with Joseph Antonelli the case of Mutuc v. Huntington Memorial
15 Hospital, Case number BC288727. This is one of the few wage and hour class action cases tried
16 in the state of California. Judge William A. MacLaughlin Issued a Statement of Decision
17 awarding \$32.8 million which led to a \$60 million lump sum settlement. Also, in 2008, I tried
18 another wage and hour class action entitled Solis v. Worldwide Network, Inc., et al., Orange
19 County Superior Court Case no. 03CC00069, before Hon. Ronald L. Bauer, which resulted in
20 judgment in favor of Defendant Worldwide Network, Inc. I recently tried a third wage and hour
21 case in San Diego that is currently on appeal.

22 16. My firm has also been involved in numerous favorable appellate court decisions
23 which have been very important in wage and hour class action law. These appellate decisions
24 include the following cases:

- 25 a. Huntington Memorial Hospital v. Superior Court (2005) 131 Cal.App.4th 893 (a
26 landmark decision regarding the manner in which the regular rate must be
27 calculated and what is considered a “subterfuge” to avoid the correct payment of
28 the regular rate and overtime rate);

- b. Tien v. Sup. Ct. (Tenet Healthcare) (2006) 139 Cal.App.4th 528 (protecting the interest of putative class members in a wage and hour case who want their identity protected);
- c. Jaimez v. Daiohs USA, Inc. (2010) 181 Cal.App.4th 1286 (the criteria required to certify pay stub claims, waiting time penalty claims, and meal and break claims among other matters);
- d. Williams v Superior Court (Allstate) (2013) 221 Cal.App.4th 1353 (confirms several important legal theories which support certification regarding common questions);
- e. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137 (one of the first California cases to consider the California Supreme Court decision in *Duran v. U.S. National Bank Association* (2014) 59 Cal.4th 1, holding that can use statistical sampling evidence to establish either liability or damages in a wage and hour class action case. The Schwan's opinion is also a seminal case regarding an employers' obligation to reimburse employees' business expenses under California Labor Code §2802);
- f. Laffitte v. Robert Half International Inc. (2014) 231 Cal.App.4th 860 (Review granted and Opinion superseded by Laffitte v. Robert Half Intern. (2015) 342 P.3d 1232) (use of a common fund recovery for attorneys' fees in class action cases). On May 27, 2016, I argued this case to the California Supreme Court;
- g. Vaquero v. Ashley Furniture Industries Inc. 824 F.3d 1150, 2016 WL 3190862 (9th Cir. June 8, 2016) (limits the impact of *Wal-Mart v. Dukes* (2011) 564 U.S. 338 with respect to the issue of commonality, limits the impact of *Comcast v. Behrend* (2013) 133 S.Ct. 1426 with respect to predominance and underscores the 9th Circuit rule that the need for individualized finding with respect to damages does not defeat class certification); and
- h. Vaquero v. Ashley Furniture Industries Inc. (2017) 9 Cal.App.5th 98 (expands the impact of *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th 864 to

1 commissioned employees for the first time; they must be separately compensated
2 for rest breaks).

3 17. Declarant is a very experienced class action counsel, including specializing in
4 the area of wage and hour issues. Some of the class action and wage and hour litigation on
5 which The Law Offices of Kevin T. Barnes has served as Lead and/or Class Counsel as follows:
6 Cruz v. Suntory Water Group, Inc., Case No. BC243596; Joel v. Athlete's Foot Group, Inc.,
7 Case No. BC 234231; Cardilino v. Perrier, Case No. BC 210181 and Holt v. Great Springs
8 Water, OC Superior Court Case No. 810642 ("Arrowhead"); Hines v. CSK Auto; Tett v. CSK
9 Auto and Noel v. CSK Auto, Case No. San Diego Superior Court, Case No. 720346 ("Kragen
10 Auto"); Soto et. al. v. Park Uniform Rental Service, et. al., Case No. BC215318; Amezcuca, et.
11 al. v. Trak Auto Corporation, Case No. BC 183900 coordinated with Tett v. Trak Auto
12 Corporation, Case No. BC 186931 matter ("Trak Auto"); Maldonado v. Footstar Center, Inc.,
13 Case No. 00CC06359; Calvo, et. al. v. McKesson HBOC, Inc., et. al., Case No. BC 228366
14 coordinated with Ware, et. al. v. McKesson Water Products Company, Case No. BC 231420
15 "(Sparkletts"); Franco v. Vans Inc., Case No. 01CC03995; Cruz v. Suntory Water Group, Inc.,
16 Case No. BC243596; Toney v. McDonald's Restaurant, et al., Case No. BC234243; Tong v.
17 21st Century Insurance Company, Case No. 01CC10913 coordinated with Echegaray v. 21st
18 Century Insurance Co., Case No. BC255189 and Requirme v. 21st Century Insurance Co., Case
19 No. BC253952 ("21st Century"); Wood v. Hollywood Entertainment, Case No. CV779511
20 coordinated with Dannelley v. Hollywood Entertainment, Inc., Case No. OC 816155 and
21 Peterson v. Hollywood Entertainment Corp., Case No. CV788126 ("Hollywood"); and Lynn
22 Lazdowski, et al. v. Bowne of Los Angeles, Inc., Case No. 02CC16722.

23 CLASS REPRESENTATIVE SERVICE AWARDS

24 18. I believe that the Class Representative Service Awards of \$10,000 for Jonathan
25 Elias and \$10,000 for Gracie Rodriguez are fair and reasonable. The Class Representatives
26 spent several hours in consultation with counsels' offices regarding the issues raised in the
27 action. The Class Representatives have remained in contact with our office throughout the
28 litigation and the settlement process. Mr. Elias provided all of the documents in his possession

1 and he also reviewed hundreds of pages of documents for the Mediation which lasted a full day.
2 Finally, the Class Representatives personally helped to prepare for and participated in the
3 Mediation. All in all, the Class Representatives have been diligent and acted above and beyond
4 that of which is expected of a Class Representative throughout all stages of the litigation, up to
5 and including preliminary approval of class action settlement. There are few individuals that
6 are willing to act as a Class Representative and provide the work, diligence and willingness to
7 assume a substantial risk should the Defendants have prevailed in this case. Here, the Class
8 Representatives' willingness to assume the financial risk is significant. California law states
9 that the losing party must pay the prevailing party's cost. As such, if Plaintiffs would have not
10 prevailed in this case, they would have been subjected to a cost award in the amount of tens of
11 thousands of dollars. As such, Plaintiffs' Counsel believes that the \$10,000 for Jonathan Elias
12 and \$10,00 for Plaintiff Gracie Rodriguez are fair and reasonable. (See Declaration of Class
13 Representative Jonathan Elias attached as **Exhibit 4** and Declaration of Class Representative
14 Gracie Rodriguez attached as **Exhibit 5**)

15 **ATTORNEY'S FEES & COSTS**

16 19. In the present case, Class Counsel is requesting \$93,333.33 for attorneys' fees.
17 Class Counsel believes that this is appropriate based upon a common fund and/or lodestar
18 analysis. This settlement is for an amount of \$280,000. Class Counsel believes that pursuant to
19 Laffitte v. Robert Half International Inc. (2016) 1 Cal.5th 480 and Lealao v. Beneficial California,
20 Inc., 82 Cal.App.4th 19, this request is fair and reasonable in view of the typical common fund
21 attorneys' fees awards and similar California class action wage and hour settlements and the
22 hours worked on this case. Likewise, Class Counsel has approximately up to \$20,000 in
23 litigation costs, not including the costs to administer the settlement fund. Class Counsel will
24 file a detailed statement of costs at the time of Final Approval.

25 20. The parties have agreed on Rust Consulting Inc. and respectfully request this
26 Court appoint them to handle the notice and claims administration procedures. The parties have
27 received an estimate from the Claims Administrator Rust Consulting Inc. for up to \$13,000 to
28 handle all claims administration, including posting all settlement documents, the Preliminary

1 and Final Approval Motion and the Judgment on their website. The claims administrator will
2 also perform an NCOA search prior to mailing the Class Notice and will perform skip traces on
3 any notice package returned as undeliverable. As such, the parties have set aside up to \$13,000
4 for this administration cost.

5 21. The only governmental involvement in this case is the existence of a PAGA
6 claim and the Plaintiffs have notified the Labor and Workforce Development Agency
7 (“LWDA”) of this settlement (*See Exhibit 6*).

8 23. After discussions with the Class Representatives, the parties believe that the
9 Class Notice only needs to be sent in English as all Class Members are English-speaking and all
10 policy documents are provided in English only.

11 24. Any checks issued by the Settlement Administrator to Class Members will be
12 negotiable for one-hundred eighty (180) calendar days. After one hundred eighty (180) calendar
13 days from the date of mailing, the checks shall become null and void, and the total amount of
14 any uncashed settlement checks will be transmitted by the Settlement Administrator to the State
15 Controller's Office, Unclaimed Property Division.

16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct.

18 Executed June 5, 2024 at Greensboro, Georgia.

19 

20 KEVIN T. BARNES

21 Declarant

EXHIBIT 1

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Attorneys for Plaintiff, JONATHAN ELIAS,
on behalf of himself and all others similarly situated,

Additional Plaintiffs' Counsel on Next Page

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

JONATHAN ELIAS, on behalf of himself
and all other similarly situated aggrieved
employees,

Plaintiffs,

v.

TMONE, LLC d/b/a "Mass Markets, Inc.," a
Delaware limited liability company;
MARLOWE COMPANIES INC. also
known as "MCI" d/b/a "Mass Markets,
Inc.," a California entity, form unknown;
and DOES 1 to 10, inclusive,

Defendants.

CLASS ACTION

Case No.: 37-2022-00032324-CU-OE-CTL

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE**

Honorable Blaine K. Bowman
Department C-74

Action filed: August 12, 2022
Trial Date: None Set

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Additional Plaintiffs' Counsel

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Attorneys for Plaintiff GRACIE RODRIGUEZ, on
behalf of herself and all others similarly situated

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1 IT IS HEREBY STIPULATED, by and between the parties in the civil actions entitled
2 JONATHAN ELIAS, individually and on behalf of all others similarly situated, (hereinafter
3 “Elias”), on the one hand, and Defendants TM ONE, LLC dba “Mass Markets, Inc.” and
4 MARLOWE COMPANIES, INC. also known as “MCI” dba “Mass Markets, Inc.” (hereinafter
5 “Defendants”) (the “Elias Action”) and GRACIE RODRIGUEZ (“Rodriguez”), on behalf of
6 herself and for similarly situated persons, and the general public v. TM ONE, LLC dba “Mass
7 Markets,” PHONE WARE, INC., PHONE NET, INC., and SUN NET, LLC, on the other hand,
8 and GRACIE RODRIGUEZ, on behalf of herself and all other similarly situated, on the one
9 hand and Defendant TM ONE, LLC dba “Mass Markets,” on the other hand (the “Rodriguez
10 Action”) and subject to the approval of the Court, that the Action is hereby compromised and
11 settled pursuant to the terms and conditions set forth in this Joint Stipulation of Class Action
12 and PAGA Settlement and Release (“Agreement,” “Settlement,” or “Stipulation of Settlement”)
13 and that the Court shall make and enter judgment, subject to the continuing jurisdiction of the
14 Court as set forth below, and subject to the definitions, recitals, and terms set forth herein which
15 by this reference become an integral part of this Stipulation of Settlement.

16 **DEFINITIONS**

17 1. “Action” means the putative class and representative actions entitled *Jonathan*
18 *Elias v. TM One, LLC dba “Mass Markets, Inc.” and Marlowe Companies Inc. also known as*
19 *“MCI” dba “Mass Markets, Inc.”* San Diego County Superior Court Case No. 37-2022-
20 00032324-CU-OE-CTL; *Gracie Rodriguez v. TM One, LLC dba “Mass Markets,” Phone Ware*
21 *Inc., Phone Net, Inc., and Sun Net, LLC* San Diego County Superior Court Case No. 37-2022-
22 00015435-CU-OE-CTL; and *Gracie Rodriguez v. TM One, LLC dba “Mass Markets,”* San
23 Diego County Superior Court Case No. 37-2022-0006663.

24 2. “Amended Complaint” or “Operative Complaint” means the First Amended
25 Complaint Plaintiff in the Elias Action filed on July 7, 2023, to assert PAGA claims and
26 encompass all claims in the initial Complaint and to add class claims from August 12, 2018 to
27 the present. For purposed of this Settlement Agreement, the Second Amended Complaint is the
28 “Operative Complaint.”

1 3. “Class Counsel” means Kevin T. Barnes, Esq. of Law Offices of Kevin T. Barnes,
2 Raphael A. Katri of Law Offices of Raphael A. Katri, and Justin F. Marquez, Esq. of Wilshire
3 Law Firm.

4 4. “Class Counsel Award” means the Court-approved attorneys’ fees for Class
5 Counsel’s litigation and resolution of the Action (not to exceed one-third [33.33%] of the
6 Maximum Settlement Amount or \$93,333.33), and the court approved costs incurred by Class
7 Counsel in connection with this Action (not to exceed Twenty Thousand Dollars [\$20,000]).

8 5. “Class Information” or “Class Lists” means information regarding Class Members
9 that Defendants shall in good faith compile from its records and shall be authorized by the Court
10 to transmit in a secured manner to the Settlement Administrator. Class Information shall be
11 transmitted in Microsoft Excel format and shall include for each Class Member’s: (i) full name;
12 (ii) last known address; (iii) Social Security number; and (iv) the number of workweeks worked
13 for Defendants in California as hourly-paid non-exempt Call Center employees during the Class
14 Period.

15 6. “Class Members” or “Settlement Class” means all hourly paid, non-exempt Call
16 Center employees employed by Defendants in the State of California during the Class Period
17 (defined as August 12, 2018, through May 31, 2024). It shall be an opt-out class.

18 7. “Class Period” means the period of August 12, 2018, through May 31, 2024.

19 8. “Class Representative Service Awards” means the Court-approved amounts to be
20 paid to Plaintiff Jonathan Elias in the amount of Ten Thousand Dollars [\$10,000] and Plaintiff
21 Gracie Rodriguez in the amount of Ten Thousand Dollars [\$10,000] in addition to Plaintiffs’
22 Individual Settlement Award, in recognition of Plaintiffs’ efforts and risks in prosecuting the
23 Action.

24 9. “Defendants” means TMONE, LLC dba “Mass Markets, Inc.,” and MARLOWE
25 COMPANIES INC. also known as “MCI” dba “Mass Markets, Inc.”

26 10. “Defense Counsel” means Justin G. Schmidt, Esq. and Laurie M. Cortez, Esq.,
27 both of Emilio Law Group, APC.
28

1 11. “Effective Date” means the date when all of the following events have occurred: (i)
2 the Stipulation of Settlement has been executed by all Parties, Class Counsel and Defense Counsel;
3 (ii) the Court has given preliminary approval to the Stipulation of Settlement; (iii) the Notice of
4 Class Action Settlement has been given to the putative members of the Settlement Class, providing
5 them with an opportunity to object to the terms of this Stipulation of Settlement or opt out of the
6 settlement; (iv) the Court has held a Final Approval Hearing and entered a Final Order and
7 Judgment certifying the Settlement Class, and approving the Stipulation of Settlement, and no
8 objections or motions to intervene have been filed, or they were withdrawn before the Court
9 entered a Final Order and Judgment; or, if an objection or motion to intervene have been filed and
10 were not subsequently withdrawn, the next business day after the period for filing any appeal, writ
11 or other appellate proceeding opposing the Court’s Final Order and Judgment has elapsed without
12 any appeal, writ or other appellate proceeding having been filed; or (v) if a Class Member objects,
13 intervenes or files a motion to vacate the judgment approving the Settlement Agreement, and if a
14 timely appeal is filed, the date of final resolution of that appeal (including any requests for
15 rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement
16 Agreement.

17 12. “Employer’s Share of Payroll Taxes” means Defendants’ portion of payroll taxes,
18 including, but not limited to FICA and FUTA, on the portion of the Individual Settlement
19 Awards that constitutes wages.

20 13. “Final Approval Hearing” means the hearing to be conducted by the Court after
21 the filing by Plaintiffs of an appropriate motion and following appropriate notice to Class
22 Members giving Class Members an opportunity to request exclusion from the Settlement Class
23 and Settlement and to object to the Settlement, at which time Plaintiffs shall request that the
24 Court finally approve the Settlement, enter the Final Order and Judgment, and take other
25 appropriate action.

26 14. “Final Order and Judgment” means the order and judgment to be entered by the
27 Court upon granting final approval of the Settlement and this Stipulation of Settlement as binding
28 upon the Parties and Participating Class Members. A proposed Final Order and Judgment shall be

1 mutually agreed upon by the Parties and submitted to the Court concurrently with Plaintiffs'
2 Motion for Final Approval of the Settlement.

3 15. "Final Report" means the report to be prepared by the Settlement Administrator
4 (after the expiration of the 180-day period in which Participating Class Members must
5 cash/deposit their Individual Settlement Award payment checks) regarding the distribution of the
6 Maximum Settlement Amount, including the total amount that was cashed/deposited by
7 Participating Class Members and the total amount of any unpaid residue or unclaimed or
8 abandoned funds pursuant to California Code of Civil Procedure section 384.

9 16. "Individual PAGA Payment" means the amount payable from the PAGA Payment
10 to each Class Member.

11 17. "Individual Settlement Award" means the amount payable from the Net
12 Settlement Amount to each Participating Class Member.

13 18. "Maximum Settlement Amount" means the maximum amount Defendants shall
14 have to pay in connection with this Settlement, by way of a common fund, which shall be
15 inclusive of all Individual Settlement Awards to Participating Class Members, the Class Counsel
16 Award, the Class Representative Service Awards, PAGA Payment, and Settlement
17 Administration Costs. Subject to Court approval and the terms of this Stipulation of Settlement,
18 the Maximum Settlement Amount Defendants shall be required to pay is Two Hundred Eighty
19 Thousand Dollars [\$280,000]. The Maximum Settlement Amount is exclusive of Employer's
20 Share of Payroll Taxes.

21 19. "Net Settlement Amount" means the Maximum Settlement Amount, less the
22 Class Counsel Award, Class Representative Service Awards, PAGA Payment to the California
23 Labor Workforce Development Agency ("LWDA"), and Settlement Administration Costs.

24 20. "Notice of Objection" means a Class Member's valid and timely submission of a
25 written objection to the Settlement to the Settlement Administrator within the Response Deadline.
26 An objection should include: (a) the objector's full name, signature, address, telephone number,
27 and the last four digits of his/her Social Security number, (b) a written statement of all grounds for
28 the objection accompanied by any legal support for such objection, and (c) copies of any papers,

1 briefs, or other documents upon which the objection is based. Objecting Class Members may
2 appear at the Final Approval Hearing either in person, or through counsel retained at Class
3 Member's own expense, to have their objection heard, whether or not they had submitted a prior
4 written objection as specified in this section. The Court will rule on any objections to the
5 settlement at the Final Approval Hearing. An objection may be withdrawn at any time. The
6 Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel
7 via email within three (3) calendar days of receipt, and the Settlement Administrator shall attach
8 any objections to its declaration of due diligence, which is to be filed with the Court prior to the
9 Final Approval Hearing. Any Participating Class Member who files an objection remains
10 eligible to receive monetary compensation from the Settlement. At no time shall any of the
11 Parties, Class Counsel, or Defense Counsel seek to solicit or otherwise encourage or discourage
12 Class Members from submitting a Notice of Objection or filing an appeal from the Final Order and
13 Judgment.

14 21. "PAGA Notice" means the January 6, 2022 letter that Class Counsel sent to the
15 LWDA pursuant to Labor Code §2699.3(a)/(c) seeking to exhaust Plaintiffs' (Elias Action)
16 administrative remedies under the Labor Code Private Attorneys General Act of 2004
17 ("PAGA"), Cal. Lab. Code §§2698, *et seq.*, and specifically alleging that Defendants failed to
18 pay the overtime wages at the legal overtime pay rate, failed to pay all wages, violated Labor
19 Code §204, failed to separately pay for rest periods, violated Labor Code §226.2(a)(3)(A), failed
20 to independently and derivatively provide accurate itemized wage statements in violation of the
21 Labor Code and the applicable Industrial Wage Order, failed to timely pay wages, violated Labor
22 Code §2751 regarding commission contracts, and owes statutory and/or civil penalties pursuant
23 to the Labor Code.

24 22. "PAGA Payment" means the amount of Ten Thousand Dollars (\$10,000), subject
25 to Court approval, to be paid from the Maximum Settlement Amount for satisfaction of
26 Plaintiffs' and Class Members' claims under PAGA. Pursuant to the PAGA, seventy five percent
27 (75%) or Seven Thousand Five Hundred Dollars (\$7,500) of this sum will be paid to the LWDA
28

1 and twenty five percent (25%), or Two Thousand Five Hundred Dollars (\$2,500) will be
2 distributed as the Individual PAGA Payments to Class Members.

3 23. "PAGA Release" or "PAGA Released Claims" means the release by all Class
4 Members for all claims for PAGA that arise out of or relate to California Labor Code sections
5 201-204, 216, 221, 226, 226.2, 226.7, 510, 516, 558, 1194, 1197, 1198, 2699, and 2751 and
6 California Business and Professions Code Section 17200 as pled in the PAGA Notice, Complaint
7 and First Amended Complaint in the Elias Action, from August 12, 2018, through May 31, 2024.
8 In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v.*
9 *Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), Class Members employed by Defendants on or
10 after August 12, 2018, who exclude themselves from this Settlement shall still receive an
11 Individual PAGA Payment directly from the Settlement Administrator for the amount of each
12 such individual's estimated share of the PAGA Payment as calculated by the Settlement
13 Administrator.

14 24. "Participating Class Members" means Plaintiffs and all other Class Members who
15 do not submit a valid and timely Request for Exclusion.

16 25. "Participating PAGA Members" means all Class Members who submit a valid
17 and timely Request for Exclusion but are nevertheless bound by the PAGA Release.

18 26. "Parties" means Plaintiffs and Defendants.

19 27. "Plaintiffs" means Plaintiffs Jonathan Elias and Gracie Rodriguez.

20 28. "Preliminary Approval Order" means the order to be issued by the Court
21 approving and authorizing the mailing of the Settlement Notice by the Settlement Administrator,
22 setting the date of the Final Approval Hearing and granting preliminary approval of the
23 Settlement set forth in this Stipulation of Settlement, among other things. A proposed
24 Preliminary Approval Order shall be mutually agreed upon by the Parties and submitted to the
25 Court concurrently with Plaintiffs' Motion for Preliminary Approval of the Settlement.

26 29. "Released Claims" includes all claims under state or local law, whether statutory,
27 common law, or administrative law, whether in law or equity, for the claims that were pled in the
28 PAGA Notice, Complaint and First Amended Complaint in the Elias Action and all the claims

1 that were pled in the Rodriguez Action, based on the factual allegations therein, that arose during
2 the Class Period, including: all claims under California Labor Code sections 201-204, 216, 221,
3 226, 226.2, 226.7, 510, 516, 558, 1194, 1197, 1198, 2699, and 2751. The settlement class shall
4 also waive claims under the California Business and Professions Code Section 17200 and
5 California's Private Attorneys' General Act based upon violations of the California Labor Code
6 sections in the preceding section including injunctive relief; liquidated damages; interest; fees;
7 and costs.

8 30. "Released Parties" means Defendants and their agents, officers, employees,
9 directors, owners, subsidiaries, affiliates, and parent companies.

10 31. "Released Claims Period" means from August 12, 2018, through May 31, 2024.

11 32. "Request for Exclusion" means a written statement submitted by a Class Member
12 indicating a request to be excluded from the Settlement. The Request for Exclusion must be in
13 writing and should: (i) be signed by the Class Member; (ii) contain the name, address, telephone
14 number, and the last four digits of the Social Security number of the Class Member requesting
15 exclusion; (iii) clearly state that the Class Member does not wish to be included in the Settlement;
16 (iv) be returned by fax or mail to the Settlement Administrator at the specific address and/or
17 facsimile number; and (v) be postmarked or faxed on or before the Response Deadline. The date
18 of the fax or postmark on the return mailing envelope will be the exclusive means to determine
19 whether a Request for Exclusion has been timely submitted. A Class Member who does not
20 request exclusion from the Settlement will be deemed a "Participating Class Member" and will be
21 bound by all terms of the Settlement, if the Settlement is granted final approval by the Court. Any
22 Class Member who validly requests to be excluded from the Settlement will no longer be a
23 member of the Settlement Class and will not have any right to object, appeal, or comment on the
24 Settlement, but will remain as Participating PAGA Member(s), and will receive an Individual
25 PAGA Payment for the PAGA Released Claims. No later than ten (10) calendar days after the
26 Response Deadline, the Settlement Administrator shall provide counsel for the Parties a complete
27 list of all Class Members who submitted a timely and valid Request for Exclusion.
28

1 33. “Response Deadline” means the deadline by which Class Members must
2 postmark or fax to the Settlement Administrator a valid Request for Exclusion, objection or
3 workweeks dispute. The Response Deadline will be forty-five (45) calendar days from the initial
4 mailing of the Settlement Notices by the Settlement Administrator unless the 45th day falls on a
5 Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day
6 on which the U.S. Postal Service is open. The Response Deadline may also be extended by
7 express agreement between Class Counsel and Defendants. Under no circumstances, however,
8 will the Administrator have the authority to extend the deadline for Class Members to submit a
9 Request for Exclusion, objection or Workweek Dispute to the settlement.

10 34. “Settlement” means the final and complete disposition of the Action pursuant to
11 this Stipulation of Settlement.

12 35. “Settlement Administrator” or “Administrator” means Rust Consulting, Inc. or
13 any other third-party action settlement administrator agreed to by the Parties and approved by the
14 Court for purposes of administering this settlement. The Parties each represent that they will not
15 have any financial interest in the Settlement Administrator or otherwise have a relationship with
16 the Settlement Administrator that could create a conflict of interest.

17 36. “Settlement Administration Costs” means the reasonable costs and fees of
18 administering the Settlement to be paid from the Maximum Settlement Amount, not to exceed
19 Thirteen Thousand Dollars (\$13,000), including, but not limited to: (i) printing, mailing and re-
20 mailing (if necessary) of Settlement Notices to Class Members; (ii) preparing and submitting to
21 Class Members and government entities all appropriate tax filings and forms; (iii) computing the
22 amount of and distributing Individual Settlement Awards, the Class Representative Service
23 Awards, the Class Counsel Award; (iv) processing and validating Requests for Exclusion; (v)
24 establishing a Qualified Settlement Fund, as defined by the Internal Revenue Code; (vi) calculating
25 and remitting to the appropriate government agencies all employer and employee payroll tax
26 obligations arising from the Settlement and preparing and submitting filings required by law in
27 connection with the payments required by the Settlement; and (vii) transmitting uncashed
28 Individual Settlement Award payments to California Controller’s Office Unclaimed Property

1 Division, with an identification of the Participating Class Member to whom the funds belong to be
2 held on behalf of the Class Member.

3 37. "Settlement Notice" means the Notice of Class Action Settlement, substantially in
4 the form attached as **Exhibit A**, which shall be subject to Court approval and which the Settlement
5 Administrator shall mail to each Class Member containing: (i) information regarding the nature of
6 the Action; (ii) a summary of the Settlement's principal terms; (iii) the Class definitions; (iv) the
7 total number of Workweek the respective Class Member worked for Defendants (according to
8 Defendants' records); (v) the Class Member's estimated Individual Settlement Award and the
9 formula for calculating Individual Settlement Awards; (vi) the dates which comprise the Class
10 Period; (vii) instructions on how to submit disputes regarding Workweek, Requests for Exclusion,
11 and/or Notices of Objection; (viii) the Response Deadline; and (ix) the claims to be released
12 pursuant to the Settlement of the Action.

13 38. "Workweeks" means the number of workweeks worked by each Class Member
14 for Defendants as an hourly paid non-exempt Call Center employee during the Class Period. For
15 purposed of payment, a week of employment shall be defined as any regular workweek in which
16 the Class Member worked on three or more calendar days.

17 39. "Workweek Dispute" means a written statement that a Class Member disputes
18 the number of Workweeks listed on his/her Settlement Notice. Any such Workweek Dispute
19 must be faxed or mailed to the Settlement Administrator by the Response Deadline. The date of
20 the fax or postmark on the written statement will be the exclusive means to determine whether a
21 Workweek Dispute has been timely submitted. A valid Workweek Dispute must be in writing and
22 should contain: (i) the Class Member's full name, signature, address, telephone number, and the last
23 four digits of his/her Social Security number; (ii) the number of Workweeks the Class Member
24 contends is correct; and (iii) any evidence supporting his/her contention. The dates of employment
25 identified for each Class Member in the applicable Class List will be presumed to be correct, unless
26 a particular Class Member proves otherwise to the Settlement Administrator by credible evidence.
27 All Workweek Disputes will be resolved and decided by the Settlement Administrator and the
28 Settlement Administrator's decision on all Workweek Disputes will be final and non-appealable.

Itemized Wage Statements.

d. On August 12, 2022, Plaintiff Elias filed the Action entitled *Jonathan Elias v. TM One, LLC, et al.* alleging one cause of action under PAGA based on the following claims: (1) Failure To Pay Overtime Wages At The Legal Overtime Pay Rate; (2) Failure To Pay All Wages; (3) Violations of Labor Code §226.2 Regarding Rest Periods ; (4) Violations of Labor Code §226.2 Regarding Rest Period Pay Rate; (5) Failure To Timely Furnish Accurate Itemized Wage Statements; (6) Penalties Under Labor Code §2699; and (7) Unfair Business Practices.

e. On November 16, 2022, Defendants filed their Motion to Compel Arbitration and Strike PAGA Representative Allegations regarding the Elias Action. The motion was heard on June 23, 2023, and the Court found Defendants' arbitration agreement to be unconscionable.

f. On July 7, 2023, Plaintiff Elias filed a First Amended Complaint adding class claims and realleging all claims based on the substantive claims in the original complaint.

g. On February 28, 2024, the Parties participated in a full-day mediation before Gail A. Glick, Esq. Although the matter did not settle at the formal mediation, the parties continued settlement communications through the mediator and the parties ultimately settled the case, which is now confirmed in the long form settlement agreement.

h. The parties shall seek approval of this Agreement by filing a motion for approval in the Elias Action.

43. Benefits of Settlement to Plaintiffs and the Class Members. Plaintiffs and Class Counsel recognize the expense and length of continued proceedings necessary to litigate Plaintiffs' disputes in the Action through trial and through any possible appeals. Plaintiffs also have taken into account the uncertainty and risks of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants' defenses thereto, and the difficulties in establishing damages, penalties, restitution and other relief sought in the Action. Plaintiffs and Class Counsel also have taken into account Defendants' agreement to enter into a settlement that confers

1 substantial benefits upon the Class Members. Based on the foregoing, Plaintiffs and Class
2 Counsel have determined that the Settlement set forth in this Stipulation of Settlement is fair,
3 adequate, and reasonable and is in the best interests of all Class Members.

4 44. Defendants' Reasons for Settlement. Defendants have concluded that further
5 defense of the Action would be protracted and expensive. Substantial amounts of Defendants' time,
6 energy, and resources have been, and unless this Settlement is completed, shall continue to be,
7 devoted to the defense of the claims asserted by Plaintiffs. Defendants have also taken into account
8 the risks of further litigation in reaching its decision to enter into this Settlement. Even though
9 Defendants contend they are not liable for any of the claims alleged by Plaintiffs in the Action and
10 denies any liability whatsoever, Defendants, nonetheless, have agreed to settle in the manner and
11 upon the terms set forth in this Stipulation of Settlement and to fully and finally put to rest the
12 claims alleged in this Action. Defendants have asserted and continue to assert that the claims
13 alleged by Plaintiffs have no merit and do not give rise to any liability, damages, restitution,
14 penalties or other payments. This Stipulation of Settlement is a compromise of disputed claims.
15 Nothing contained in this Stipulation of Settlement, no documents referred to herein, and no action
16 taken to carry out this Stipulation of Settlement, shall be construed or used as an admission by or
17 against Defendants as to the merits or lack thereof of the claims asserted in the Action. Defendants
18 contend that they have complied with all applicable state, federal and local laws. In the event this
19 Settlement does not obtain final approval, Defendants retain all rights they have to defend
20 themselves in this matter and to take any actions in defense of themselves that are available to it.

21 CLASS CERTIFICATION

22 45. Solely for purposes of settling the Action, and not for purposes of class
23 certification should the Settlement not be approved or for any other reason, the Parties stipulate
24 and agree that the requisites for establishing class certification with respect to the Settlement
25 Class have been met and are met. More specifically, for purposes of settlement only, the Parties
26 stipulate and agree that:

27 a. The Settlement Class is ascertainable and so numerous as to make it
28 impracticable to join all Class Members;

1 b. There are common questions of law and fact including, but not limited to,
2 the following:

- 3 i. Whether Defendants failed to pay all wages with regarding to Class
4 Members;
- 5 ii. Whether Defendants' failure to pay overtime wages at the legal
6 overtime pay rate are illegal with regard to Class Members;
- 7 iii. Whether Defendants' failure to pay all wages are illegal with regard to
8 Class Members;
- 9 iv. Whether Defendants violated Labor Code §226.2 regard rest periods
10 with regard to Class Members;
- 11 v. Whether Defendants violated Labor Code §226.2 regard rest period
12 pay rate with regard to Class Members;
- 13 vi. Whether Defendants failed to provide legally-requisite meal periods to
14 Class Members in violation of the Labor Code and Section 11 of the
15 IWC Wage Orders;
- 16 vii. Whether Defendants failed to authorize and permit paid legally-
17 requisite rest periods to Class Members in violation of the Labor Code
18 and Section 12 of the IWC Wage Orders;
- 19 viii. Whether Defendants independently failed to timely furnish accurate
20 itemized wage statements to the Class Members;
- 21 ix. Whether Defendants derivatively failed to timely furnish accurate,
22 itemized and legal wage statements to Class Members;
- 23 x. Whether Defendants are liable pursuant to Labor Code §203 to the
24 Class Members;
- 25 xi. Whether Defendants' violations of Labor Code §2751 regarding
26 commission contracts are illegal with regard to Class Members;
- 27 xii. Whether the Class Members are entitled to injunctive relief; and
- 28 xiii. Whether Defendants are liable for attorneys' fees and costs.

1 c. Class Representatives' claims are typical of the claims of the Settlement
2 Class;

3 d. Class Representatives and Class Counsel will fairly and adequately
4 protect the interests of the Settlement Class;

5 e. The prosecution of separate actions by individual members of the
6 Settlement Class would create the risk of inconsistent or varying adjudications, which would
7 establish incompatible standards of conduct; and

8 f. Questions of law and fact common to the members of the Settlement
9 Class predominate over any questions affecting any individual Class Member, and a class
10 action is superior to other available means for the fair and efficient adjudication of the
11 controversy.

12 46. Should this Settlement not be approved or be terminated, all stipulations set forth
13 in the immediately preceding Paragraph shall be null and void and shall not be admissible for
14 any purpose whatsoever.

15 **TERMS OF SETTLEMENT**

16 NOW THEREFORE, in consideration of the mutual covenants, promises, and
17 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

18 47. Binding Settlement. This Settlement shall bind the Parties and all Participating
19 Class Members and Participating PAGA Members, subject to the terms and conditions hereof
20 and the Court's approval.

21 47. Tax Liability. The Parties make no representations as to the tax treatment or legal
22 effect of the payments specified herein, and Class Members are not relying on any statement or
23 representation by the Parties, Class Counsel or Defense Counsel in this regard. Participating Class
24 Members, Participating PAGA Members and Class Counsel understand and agree that they shall
25 be solely and legally responsible for the payment of all applicable taxes and penalties assessed on
26 the payments specified herein.

27 48. Circular 230 Disclaimer. The Parties acknowledge and agree that (i) no provision
28 of this Stipulation of Settlement, and no written communication or disclosure between or among

1 the Parties, Class Counsel or Defense Counsel and other advisers, is or was intended to be, nor
2 shall any such communication or disclosure constitute or be construed or be relied upon as, tax
3 advice within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10,
4 as amended); (ii) the acknowledging party (a) has relied exclusively upon his, her, or its own,
5 independent legal and tax counsel for advice (including tax advice) in connection with this
6 Stipulation of Settlement, (b) has not entered into this Stipulation of Settlement based upon the
7 recommendation of any other party or any attorney or advisor to any other party, and (c) is not
8 entitled to rely upon any communication or disclosure by any attorney or adviser to any other
9 party to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no
10 attorney or adviser to any other party has imposed any limitation that protects the confidentiality
11 of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally
12 binding) upon disclosure by the acknowledging party of the tax treatment or tax structure of any
13 transaction, including any transaction contemplated by this Stipulation of Settlement.

14 49. Preliminary Approval of Settlement. Class Counsel will reserve a date for a hearing
15 on Plaintiffs' Motion for Preliminary Approval to take place at a time mutually agreed to by the
16 Parties so that the Parties may request provisional certification of the Settlement Class for
17 settlement purposes only and the setting of a Final Approval Hearing date. The Parties agree to
18 work diligently and cooperatively to have this Settlement presented to the Court for preliminary
19 approval. The proposed Order granting Plaintiffs' Motion for Preliminary Approval shall be
20 mutually agreed to by the Parties prior to Plaintiffs submitting the proposed Order to the Court.
21 The Preliminary Approval Order shall provide for, among other things, the Settlement Notice to be
22 sent to Class Members as specified herein.

23 50. Release by All Participating Class Members. All Participating Class Members,
24 including Plaintiffs, shall be deemed to have released their respective Released Claims against the
25 Released Parties upon the date on which the payment of the Maximum Settlement Amount is made
26 by Defendants as provided in paragraph 54 below. Plaintiffs and Class Members who do not
27 Request Exclusion will be deemed to have fully, finally and forever released, settled,
28 compromised, relinquished, and discharged with respect to all of the Released Parties for any and

all Released Claims that accrued during the Released Claims Period. The Settlement Class and each Class Member who has not submitted a valid Request for Exclusion, fully releases and discharges the Released Parties for the Released Claims for any period during the Released Claims Period.

51. PAGA Release by All Class Members. All Class Members, including Plaintiffs and Participating PAGA Members, shall be deemed to have released their respective PAGA Released Claims, premised in whole or in part on any of the claims, facts, or allegations set forth in the PAGA Notice, Complaint and First Amended Complaint, against the Released Parties upon the date on which the payment of the Maximum Settlement Amount is made by Defendants, as provided in paragraph 54 below. It is understood that Class Members will not have the opportunity to opt out of, or object to, the PAGA Release. Further, the Class Members are bounded by the PAGA Release regardless of whether they cash and/or otherwise negotiate their Individual PAGA Payment.

52. Additional Release and Waiver of Claims by Plaintiffs. In addition to the release of Released Claims against the Released Parties made by all Participating Class Members, as set forth above, Plaintiffs, in their individual capacity, agrees to release the Released Parties from any and all claims, known and unknown, under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law, arising as of the date of execution of this Agreement including but not limited to claims arising from or related to their employment with Defendants and their compensation while an employee of the Defendants (“Plaintiffs’ Released Claims”). Plaintiffs shall provide a general release of any and all claims against Defendants as well as its agents, officers, employees, directors, owners, subsidiaries, affiliates, parent companies and other related parties standard in such an agreement.

Plaintiffs’ Released Claims include all claims, whether known or unknown. Even if Plaintiffs discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of Plaintiffs’ Released Claims, those claims will remain released and forever barred. To effect a full and complete general release as described above, Plaintiffs expressly waive and relinquish all rights and benefits of section 1542 of the Civil Code

1 of the State of California, and does so understanding and acknowledging the significance and
2 consequence of specifically waiving section 1542. Section 1542 of the Civil Code of the State of
3 California states as follows:

4 **A general release does not extend to claims that the creditor or**
5 **releasing party does not know or suspect to exist in his or her**
6 **favor at the time of executing the release and that, if known by**
7 **him or her, would have materially affected his or her settlement**
8 **with the debtor or released party.**

9 Thus, notwithstanding the provisions of section 1542, and to implement a full and complete
10 release and discharge of the Released Parties, Plaintiffs expressly acknowledge this Stipulation of
11 Settlement is intended to include in its effect, without limitation, all claims Plaintiffs does not
12 know or suspect to exist in Plaintiffs' favor at the time of signing this Stipulation of Settlement,
13 and that this Stipulation of Settlement contemplates the extinguishment of any such claims.
14 Plaintiffs warrant that they have read this Stipulation of Settlement, including this waiver of
15 California Civil Code section 1542, and that Plaintiffs have consulted with or had the opportunity
16 to consult with counsel of Plaintiffs' choosing about this Stipulation of Settlement and specifically
17 about the waiver of section 1542, and that Plaintiffs understand this Stipulation of Settlement and
18 the section 1542 waiver, and so Plaintiffs freely and knowingly enters into this Stipulation of
19 Settlement. Plaintiffs further acknowledges that Plaintiffs later may discover facts different from or
20 in addition to those Plaintiffs now know or believe to be true regarding the matters released or
21 described in this Stipulation of Settlement, and even so Plaintiffs agree that the releases and
22 agreements contained in this Stipulation of Settlement shall remain effective in all respects
23 notwithstanding any later discovery of any different or additional facts. Plaintiffs expressly
24 assumes any and all risk of any mistake in connection with the true facts involved in the matters,
25 disputes, or controversies released or described in this Stipulation of Settlement or with regard to
26 any facts now unknown to Plaintiffs relating thereto.

27 ///

28 ///

1 53. Settlement Administration.

2 a. Within fifteen (15) calendar days of entry of the Preliminary Approval
3 Order, Defendants shall provide the Settlement Administrator with the Class Lists for purposes
4 of mailing the Settlement Notices to Class Members. The Settlement Administrator shall not be
5 permitted to share any Class Information included in the Class Lists with Plaintiffs or Class
6 Counsel absent express approval by Defendants or Defense Counsel.

7 i. Notice by First Class U.S. Mail. Upon receipt of the Class Lists, the
8 Settlement Administrator shall perform a search based on the National Change of Address Database
9 maintained by the United States Postal Service to update and correct any known or identifiable
10 address changes. Within fifteen (15) calendar days after receiving the Class Lists from Defendants
11 as provided herein, the Settlement Administrator shall mail copies of the Settlement Notice to all
12 Class Members via regular First-Class U.S. Mail. The Settlement Administrator shall exercise its best
13 judgment to determine the current mailing address for each Class Member. The address identified by
14 the Settlement Administrator as the current mailing address shall be presumed to be the most current
15 mailing address for each Class Member. The Parties agree that this procedure for notice provides
16 the best notice practicable to Class Members and fully complies with due process.

17 ii. Undeliverable Settlement Notices. Any Settlement Notice returned
18 to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be
19 re-mailed to the forwarding address affixed thereto within five (5) calendar days of receipt of the
20 returned Settlement Notice by the Settlement Administrator. If no forwarding address is provided,
21 the Settlement Administrator shall attempt to determine a correct address by the use of skip-
22 tracing, or other type of automated search, using the name, address and/or Social Security number
23 of the Class Member involved, and shall then perform a re-mailing to the Class Member whose
24 Settlement Notice was returned as non-deliverable within five (5) calendar days of receipt of the
25 returned Settlement Notice by the Settlement Administrator, assuming another mailing address is
26 identified by the Settlement Administrator. Class Members who are sent a re-mailed Settlement
27 Notice shall have their Response Deadline extended by ten (10) calendar days from the date the
28 Settlement Administrator re-mails the Settlement Notice. If these procedures are followed, notice

1 to Class Members shall be deemed to have been fully satisfied, and if the intended recipient of the
2 Settlement Notice does not receive the Settlement Notice, the intended recipient shall nevertheless
3 remain a Class Member and shall be bound by all terms of the Settlement and the Final Order and
4 Judgment.

5 iii. Determination of Individual Settlement Awards and Individual
6 PAGA Payments. The Settlement Administrator shall determine the eligibility for, and the
7 amounts of, each Individual Settlement Award and Individual PAGA Payment under the terms of
8 this Stipulation of Settlement. The Settlement Administrator's determination of the eligibility for
9 and amount of each Individual Settlement Award and Individual PAGA Payment shall be binding
10 upon the Class Members and the Parties. In the absence of fraud or gross negligence, Defendants'
11 workweek estimates shall be presumed accurate.

12 iv. Disputes Regarding Administration of Settlement. Any dispute not
13 resolved by the Settlement Administrator concerning the administration of the Settlement shall
14 be resolved by the Court.

15 b. Monitoring and Reviewing Settlement Administration. The Parties have
16 the right to monitor and review the administration of the Settlement to verify that the monies
17 allocated under the Settlement are distributed in the correct amount, as provided for in this
18 Stipulation of Settlement.

19 c. Certification Reports Regarding Individual Settlement Award Calculations.
20 The Settlement Administrator will provide Defense counsel and Class Counsel a weekly report
21 which certifies: (i) the number of Class Members who have submitted valid Requests for Exclusion
22 or objections; and (ii) whether any Class Member has submitted a challenge to any information
23 contained in their Settlement Notice, including but not limited to the number of Class Members
24 from the Settlement Class who have submitted a dispute of Workweeks. Additionally, the
25 Settlement Administrator will provide to counsel for both Parties any updated reports regarding the
26 administration of the Settlement Agreement as needed or requested.

27 d. Best Efforts. The Parties agree to use their best efforts to carry out the
28 terms of this Settlement.

1 54. Funding and Allocation of Maximum Settlement Amount. The Maximum
2 Settlement Amount shall be paid by Defendants in one lump sum payment within fifteen (15)
3 calendar days after the Effective Date. Defendants shall provide the Maximum Settlement Amount
4 to the Settlement Administrator in any feasible manner, including, but not limited to, by way of a
5 wire transfer. Within fifteen (15) calendar days thereafter, the Settlement Administrator will
6 distribute the payments to Plaintiffs for their awarded Class Representative Service Awards, to
7 Class Counsel for their awarded attorneys' fees and costs, to the LWDA, and to the participating
8 class members. If this Settlement is not finally approved by the Court in full, or is terminated,
9 rescinded, canceled or fails to become effective for any reason, or if the Effective Date does not
10 occur, then no portion of the Maximum Settlement Amount shall be paid.

11 a. Payments to the Settlement Class. Class Members shall not be required to
12 submit a claim in order to receive a share of the Net Settlement Amount, and no portion of the
13 Maximum Settlement Amount shall revert to Defendants or result in an unpaid residue. The
14 Settlement Administrator shall first compute the Net Settlement Amount by deducting from the
15 Maximum Settlement Amount approved by the Court for the Class Counsel Award, Class
16 Representative Service Awards, PAGA Payment to the LWDA, and Settlement Administration
17 Costs. To the extent the Court does not approve the full requested attorneys' fees, litigation
18 costs, service awards or settlement administration costs, the Net Settlement Amount will increase
19 accordingly, by the difference between the request amount and the amount awarded by the Court.

20 i. Individual Settlement Award: From the Net Settlement Amount,
21 the Settlement Administrator will calculate each Individual Settlement Award by dividing the
22 Net Settlement Amount by the total number of Workweek resulting in the Workweek Value and
23 then multiplying the Workweek Value by the number of Workweek worked by each Class
24 Member. All Class Members will be entitled to payment for at least one Workweek. Defendants
25 will provide the total number of Workweek for each Class Member to the Settlement
26 Administrator. The Settlement Administrator will calculate the number of Workweek worked by
27 the Class Members during the Class Period, the amount to be paid per Workweek, and the
28 Individual Settlement Awards to eligible Class Members. All Workweek Disputes will be

resolved and decided by the Settlement Administrator and the Settlement Administrator's decision on all Workweek Disputes will be final and non-appealable.

ii. Individual PAGA Payment: The Settlement Administrator will calculate each Class Member's Individual PAGA Payment by dividing the 25% of the PAGA Payment to be distributed to Class Members, i.e. \$2,500 by the total number of Workweeks for the entire Settlement Class resulting in the PAGA Workweek Value; and then multiplying the PAGA Workweek Value by the number of Workweeks worked by each Class Member. All Class Members will be entitled to payment for at least one Workweek.

iii. Each Participating Class Member's Individual Settlement Award and Individual PAGA Payment shall be calculated solely by the Settlement Administrator using Defendants' Workweek data. Defendants' Workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Claims Administrator by credible evidence. All Workweek Disputes will be resolved and decided by the Claims Administrator and the Claims Administrator's decision on all Workweek Disputes will be final and non-appealable.

iv. Individual Settlement Award and Individual PAGA Payments shall be mailed by the Settlement Administrator by regular First Class U.S. Mail to each Participating Class Member's last known mailing address within ten (10) calendar days after Defendants provides the Settlement Administrator with the Maximum Settlement Amount. Prior to mailing the Individual Settlement Awards and the Individual PAGA Payments, the Settlement Administrator shall perform a search based on the National Change of Address Database maintained by the United States Postal Service to update and correct any known or identifiable address changes.

v. Should any of the following occur, the Settlement Administrator will proportionately increase the estimated Individual Settlement Award of each Participating Class Member to ensure that the entire Net Settlement Amount is distributed to Participating Class Members: (i) any Class Members submit timely and valid, or otherwise accepted, Requests for Exclusion following the provision of Settlement Notices and expiration of the Response Deadline; (ii) the Court approves the Class Representative Service Awards in amounts less than

1 those requested by Plaintiffs, as detailed herein; (iii) the Court approves a Class Counsel Award
2 in an amount less than that requested by Plaintiffs, as detailed herein; and/or (iv) the Court
3 approves Settlement Administration Costs in an amount less than that requested by Plaintiffs, as
4 detailed herein.

5 vi. Individual Settlement Award payments and Individual PAGA
6 Payments shall be made by check and shall be made payable to each Participating Class Member
7 as set forth in this Stipulation of Settlement.

8 vii. Individual Settlement Awards shall be allocated as follows: 1/3 as
9 alleged unpaid wages subject to all applicable tax withholdings; 1/3 as alleged unpaid interest;
10 and 1/3 as unpaid penalties. The Settlement Administrator shall issue an IRS Form W-2 to each
11 Participating Class Member for the portion of each Individual Settlement Award payment
12 allocated as alleged unpaid wages and subject to all applicable tax withholdings. The Settlement
13 Administrator shall issue an IRS Form 1099 to each Class Member for the portion of each
14 Individual Settlement Award and for the Individual PAGA Payment allocated as alleged unpaid
15 non-wage penalties and interest and not subject to payroll tax withholdings. The Settlement
16 Administrator shall calculate the amount of the Employer's Share of Payroll Taxes and shall
17 remit and report the applicable portions of the payroll tax payment to the appropriate taxing
18 authorities in a timely manner. Defendants will be responsible for paying their share of the
19 Payroll Taxes and this amount will not be deducted from the Maximum or Net Settlement
20 Amount.

21 viii. Any Individual Settlement Award Payment Check and/or
22 Individual PAGA Payment check issued by the Settlement Administrator to Participating Class
23 Members after the expiration of the 180-day period, the Settlement Administrator will prepare
24 the Final Report regarding the distribution of the Maximum Settlement Amount, including the
25 total amount that was cashed/deposited by Participating Class Members and the total amount of
26 any uncashed settlement checks pursuant to California Code of Civil Procedure section 384.
27 After the Final Report is filed, the total amount of any uncashed settlement checks will be
28 transmitted by the Settlement Administrator to the California Controller's Office Unclaimed

Property Division, with an identification of the Participating Class Member to whom the funds belong, in accordance with Code of Civil Procedure section 384.

ix. In the event a Class Member fails to cash/deposit his or her Individual Settlement Award check and/or Individual PAGA Payment check, the Participating Class Member shall nevertheless remain bound by the Settlement.

x. All monies received by Class Members under the Settlement which are attributable to wages shall constitute income to such Class Members solely in the year in which such monies actually are received by the Class Members. It is expressly understood and agreed that the receipt of Individual Settlement Awards shall not entitle any Class Member to additional compensation or benefits under any collective bargaining agreement or under any bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor shall it entitle any Class Member to any increased pension and/or retirement, or other deferred compensation benefits. It is the intent of the Parties that the Individual Settlement Awards and Individual PAGA Payments provided for in this Stipulation of Settlement are the sole payments to be made by Defendants to Class Members in connection with this Settlement, with the exception of Plaintiffs, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Individual Settlement Awards and/or and Individual PAGA Payments. Furthermore, the receipt of Individual Settlement Awards and Individual PAGA Payments by Class Members shall not, and does not, by itself establish any general, special, or joint employment relationship between and among the Class Member(s) and Defendants.

b. Class Representative Service Awards. For the purposes of this Settlement only, the Parties agree to the designation of Plaintiffs Jonathan Elias and Gracie Rodriguez as Class/PAGA Representatives. In recognition of their time and effort in bringing and presenting the Action and for releasing their Released Claims, Plaintiffs shall request Class Representative Service Awards not to exceed Ten Thousand Dollars (\$10,000) to Jonathan Elias and Ten Thousand Dollars (\$10,000) to Gracie Rodriguez. Plaintiffs' request for such Class Representative Service Awards shall be subject to approval from the Court. Defendants agree not

1 to oppose or object to Plaintiffs' request for Class Representative Service Awards in an amount
2 not to exceed this amount. The Class Representative Service Awards will be in addition to
3 Plaintiffs' Individual Settlement Payment paid pursuant to the Settlement. The Settlement
4 Administrator shall issue an IRS Form 1099 to Plaintiffs for their Class Representative Service
5 Awards. Plaintiffs shall be solely and legally responsible to pay any and all applicable taxes on
6 their Class Representative Service Awards. Any amount requested by Plaintiffs for the Class
7 Representative Service Awards and not awarded by the Court shall become part of the Net
8 Settlement Amount and shall be distributed to Participating Class Members as part of their
9 Individual Settlement Awards.

10 c. Class Counsel Award. Class Counsel shall be entitled to request attorneys'
11 fees in an amount not to exceed one-third (33.33%) of the Maximum Settlement Amount, which
12 amounts to Ninety-Three Thousand Three Hundred Thirty-Three Hundred Dollars and Thirty-
13 Three Cents (\$93,333.33). In addition, Class Counsel shall also be entitled to request an award of
14 costs associated with Class Counsel's prosecution of the Action not to exceed Twenty Thousand
15 Dollars (\$20,000). Class Counsel's request for such attorneys' fees and costs shall be subject to
16 approval from the Court. Defendants agree not to oppose or object to Class Counsel's request for
17 attorneys' fees or to Counsel's request for attorneys' costs. In the event the Court awards Class
18 Counsel less than Ninety-Three Thousand Three Hundred Thirty-Three Hundred Dollars and
19 Thirty-Three Cents (\$93,333.33) in attorneys' fees and/or less than Twenty Thousand Dollars
20 (\$20,000) in costs, the difference shall become part of the Net Settlement Amount and shall be
21 distributed to Participating Class Members as part of their Individual Settlement Awards. Class
22 Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel
23 Award. Class Counsel shall provide the Settlement Administrator with properly completed and
24 signed copies of IRS Form W-9 in order for the Settlement Administrator to process the Class
25 Counsel Award approved by the Court. The Settlement Administrator shall issue an IRS
26 Form 1099 to Class Counsel for the Class Counsel Award.

27 55. Settlement Administration Costs. The Settlement Administration fees and
28 expenses, which are estimated not to exceed Thirteen Thousand Dollars (\$13,000), shall be paid

1 from the Maximum Settlement Amount. Prior to Plaintiffs filing a Motion for Final Approval of
2 the Settlement, the Settlement Administrator shall provide the Parties with a statement detailing
3 the Settlement Administration Costs to date. The Parties agree to cooperate in the Settlement
4 Administration process and to make all reasonable efforts to control and minimize Settlement
5 Administration Costs.

6 i. The Parties each represent they do not have any financial interest
7 in the Settlement Administrator or otherwise have a relationship with the Settlement
8 Administrator that could create a conflict of interest.

9 ii. The Settlement Administrator shall keep the Parties timely
10 apprised of the performance of all Settlement Administrator responsibilities required by the
11 Settlement. The Settlement Administrator shall be authorized to establish a Qualified Settlement
12 Fund ("QSF") pursuant to IRS rules and regulations in which the Maximum Settlement Amount
13 shall be placed and from which payments required by the Settlement shall be made.

14 56. Payroll Taxes. In accordance with this Settlement and to the fullest extent
15 possible, the Maximum Settlement Amount shall resolve, satisfy and completely extinguish all
16 of Defendants' liability with respect to the Class Members, except that the Defendants shall
17 solely be responsible for the employer portion of the payroll taxes on the portion of the
18 Individual Settlement Awards that constitutes wages and these taxes shall be paid by the
19 Defendants in addition to the Maximum Settlement Amount. Upon the transfer of the Maximum
20 Settlement Amount and the employer portion of payroll taxes on the portion of the Individual
21 Settlement Awards that constitutes wages, Defendants shall have no further payment or defense
22 obligation whatsoever with respect to any claims covered by this Settlement made or asserted
23 by any person or entity anywhere in the world in connection with the Class Members.

24 57. Final Settlement Approval Hearing and Entry of Final Order and Judgment.
25 Following expiration of the Response Deadline, a Final Approval Hearing shall be conducted by
26 the Court for the Court to determine whether to grant final approval of the Settlement, including
27 determining the amounts properly payable for: (i) the Class Counsel Award; and (ii) the Class
28 Representative Service Awards. At least sixteen (16) court days prior to the Final Approval

1 Hearing, the Settlement Administrator shall provide a written report or declaration to the Parties
2 describing the process and results of the administration of the Settlement to date, which report or
3 declaration shall be filed by Plaintiffs with the Court prior to the Final Approval Hearing. The
4 Parties agree to work diligently and cooperatively to have this Settlement presented to the Court
5 for final approval.

6 58. Duties of the Parties Prior to Court Approval. The Parties shall promptly submit
7 this Settlement Agreement to the Court in support of Plaintiffs' Motion for Preliminary Approval
8 and determination by the Court as to its fairness, adequacy, and reasonableness. Promptly upon
9 execution of this Settlement Agreement, the Parties shall apply to the Court for the entry of an
10 order scheduling a fairness hearing on the question of whether the proposed settlement, including
11 payment of attorneys' fees and costs, the Class Representatives' Service Award payments, and the
12 PAGA Payment, should be finally approved as fair, reasonable and adequate as to the members of
13 the Settlement Class. As part of Plaintiffs' Motion for Preliminary Approval, Plaintiffs shall also
14 apply to the Court for the entry of an Order as follows:

- 15 a. Certifying the Settlement Class for settlement purposes only;
- 16 b. Approving, as to form and content, the proposed Settlement Notice;
- 17 c. Approving the manner and method for Class Members to object or
18 request exclusion from the Settlement, as contained herein and within the Settlement Notice;
- 19 d. Directing the mailing of the Settlement Notices to Class Members, by first
20 class mail;
- 21 e. Preliminarily approving the Settlement subject only to the objections of
22 Class Members and final review by the Court; and
- 23 f. Setting a Final Approval Hearing.

24 59. Duties of the Parties Following Final Approval. Following final approval by the
25 Court of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a
26 proposed Final Order of Approval and Judgment:

- 27 a. Approving the Settlement, adjudging the terms thereof to be fair,
28 reasonable and adequate, and directing consummation of its terms and provisions;

1 b. Approving Class Counsel's application for an award of attorneys' fees
2 and costs;

3 c. Approving the Class Representative Service Award payments to
4 Plaintiffs;

5 d. Setting a date when the Parties shall submit the Final Report regarding the
6 distribution of the Maximum Settlement Amount pursuant to California Code of Civil Procedure
7 section 384, and, if necessary a date for a final accounting hearing following its receipt of the Final
8 Report;

9 e. Entering judgment in this Action barring and enjoining all members of the
10 Settlement Class from prosecuting against any of the Released Parties, any individual or class, or
11 representative claims released herein pursuant to the Settlement Agreement, upon satisfaction of all
12 payments and obligations hereunder.

13 60. Revocation of Settlement by Defendants. If ten percent (10%) or more of Class
14 members opt-out of the Class, Defendants shall have the sole and absolute discretion to
15 rescind/void the Settlement Agreement within twenty (20) days after receiving from the
16 Settlement Administrator the final list of opt-outs. Defendants agree to meet and confer in good
17 faith with Class Counsel before rescinding or voiding the Settlement Agreement. In the event
18 that Defendants elect to rescind/void the Settlement Agreement, it shall provide written notice of
19 such rescission to Class Counsel. Such rescission shall have the same effect as a termination of
20 this Settlement Agreement for failure to satisfy a condition of settlement, and the Settlement
21 Agreement shall become null and void and have no further force or effect, and the Settlement
22 Class certified pursuant to this Settlement Agreement will be decertified for all purposes. If
23 Defendants choose to terminate this Settlement Agreement under this provision, it shall be
24 responsible to pay the Settlement Administrator's fees and costs incurred to that point. Not party
25 will encourage any class member to opt out of the Settlement.

26 61. Nullification of Settlement. In the event: (i) the Court does not enter the
27 Preliminary Approval Order; (ii) the Court does not grant final approval of the Settlement;
28 (iii) the Court does not enter the Final Order and Judgment; or (iv) the Settlement does not

1 become final for any other reason, this Stipulation of Settlement shall be rendered null and void,
2 any order or judgment entered by the Court in furtherance of this Settlement shall be treated as
3 void from the beginning and this Stipulation of Settlement and any documents related to it shall
4 not be used by any Class Member or Class Counsel to support any claim or request for class
5 certification in the Action, and shall not be used in any other civil, criminal or administrative
6 action against Defendants or any of the other Released Parties. Additionally, should the
7 Settlement not become final for any reason, the Parties will request that the Court reopen
8 proceedings within thirty (30) calendar days, and any Settlement Administration Costs already
9 incurred by the Settlement Administrator shall be split evenly amongst the Parties. If Defendants
10 elect to revoke the Settlement, as specified in Paragraph 60, the Parties and any monies required
11 to be paid under this Settlement shall be returned to their respective statuses as of the date and
12 time immediately prior to the execution of this Stipulation of Settlement, and the Parties shall
13 proceed in all respects as if this Stipulation of Settlement had not been executed, except that any
14 Settlement Administration Costs already incurred by the Settlement Administrator shall be paid
15 to the Settlement Administrator by Defendants. In the event an appeal is filed from the Court's
16 Final Order and Judgment, or any other appellate review is sought, administration of the
17 Settlement shall be stayed pending final resolution of the appeal or other appellate review and
18 the stay shall only be lifted if the end result of the appeal or other proceeding is that the terms of
19 this settlement agreement are upheld.

20 62. Plaintiffs' Waiver of Right to Be Excluded. Plaintiffs agree that by signing this
21 Settlement Agreement, they will be bound by the terms herein. Plaintiffs further agree that, upon
22 signing this Settlement Agreement, they will not request to be excluded from this Settlement and
23 that any such request for exclusion by Plaintiffs will be void and of no force or effect.

24 63. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
25 class certification for purposes of this Settlement only; and either party may appeal any court
26 order that materially alters the Settlement Agreement's terms. Nothing in this Settlement
27 Agreement shall preclude Plaintiffs from appealing from a court order denying or failing to grant
28 in full their requests for attorneys' fees, costs, or service awards.

1 64. No Admission by Defendants. Defendants deny all claims alleged in this Action
2 and denies all wrongdoing whatsoever by Defendants. Neither this Stipulation of Settlement, nor
3 any of its terms and conditions, nor any of the negotiations connected with it, is a concession or
4 admission, and none shall be used against Defendants as an admission or indication with respect to
5 any claim of any fault, concession, or omission by Defendants or that class certification is proper
6 under the standard applied to contested certification motions. The Parties stipulate and agree to the
7 certification of the proposed class for settlement purposes only. The Parties further agree that this
8 Stipulation of Settlement will not be admissible in this or any other proceeding as evidence that
9 either (i) a class action should be certified or (ii) Defendants are liable to Plaintiffs or any Class
10 Member, other than according to the terms of this Stipulation of Settlement.

11 65. Publicity.

12 a. Prior to the Filing of Plaintiffs' Motion for Preliminary Approval. Class
13 Representatives and Class Counsel will not make any public disclosures of any kind regarding
14 the Settlement, this Stipulation of Settlement, including but not limited to postings on Class
15 Counsel's websites and postings on any social media sites/outlets, until after the Motion for
16 Preliminary Approval is filed. Class Counsel will take all steps necessary to ensure the Class
17 Representatives are aware of, and will encourage them to adhere to, the restriction against any
18 public disclosures regarding the Settlement, this Stipulation of Settlement, and the Confidential
19 Memorandum of Understanding until after the Motion for Preliminary Approval is filed.
20 Further, Class Counsel will not include, reference or use the Settlement for any marketing or
21 promotional purposes, or for attempting to influence business relationships at Defendants'
22 facilities, either before or after the Motion for Preliminary Approval is filed.

23 b. Following the Court's Order Granting Preliminary Approval. Class
24 Representatives and Class Counsel will not initiate any communications with the media or third
25 parties, and, if contacted by the media or third parties, will only discuss information publicly
26 available. Class Counsel will take all steps necessary to ensure the Class Representatives are
27 aware of, and will encourage them to adhere to, the restriction against initiating any media
28 comment. Class Counsel further agrees not to use the Settlement or any of its terms for any

1 marketing or promotional purposes. Nothing herein will restrict Class Counsel from including
2 publicly available information regarding this settlement in future judicial submissions regarding
3 Class Counsel's qualifications and experience. Further, as stated above, Class Counsel will not
4 include, reference or use the Settlement for any marketing or promotional purposes, or for
5 attempting to influence business relationships at Defendants, either before or after the Motion for
6 Preliminary Approval is filed. Nothing herein will restrict Plaintiffs or Class Counsel from
7 communicating with putative members of the Settlement Class about the Settlement following
8 the Court's Order granting Preliminary Approval.

9 66. Waiver. No waiver of any condition or covenant contained in this Settlement
10 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
11 to imply or constitute a further waiver by such party of the same or any other condition,
12 covenant, right or remedy.

13 67. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by
14 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
15 Judgment to the Court for its approval, pursuant to Rule 3.770 of the California Rules of Court.
16 After entry of the Judgment, the Court will have continuing jurisdiction solely for purposes of
17 addressing: (i) the interpretation and enforcement of the terms of the Settlement, (ii) Settlement
18 administration matters, and (iii) such post-Judgment matters as may be appropriate under court
19 rules or as set forth in this Agreement.

20 68. Exhibits and Headings. The terms of this Stipulation of Settlement include the
21 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
22 set forth herein. The Exhibits to this Stipulation of Settlement are an integral part of the
23 Settlement. The descriptive headings of any paragraphs or sections of this Stipulation of
24 Settlement are inserted for convenience of reference only.

25 69. Amendment or Modification. This Stipulation of Settlement may be amended or
26 modified only by a written instrument signed by counsel for all Parties or their successors-in-
27 interest.

1 70. Entire Agreement. This Stipulation of Settlement and any attached Exhibits
2 constitute the entire agreement between the Parties, and no oral or written representations,
3 warranties, or inducements have been made to Plaintiffs or Defendants concerning this
4 Stipulation of Settlement or its Exhibits other than the representations, warranties, and covenants
5 contained and memorialized in this Stipulation of Settlement and its Exhibits. No other prior or
6 contemporaneous written or oral agreements may be deemed binding on the Parties.

7 71. Authorization to Enter Into Settlement Agreement. Class Counsel and Defense
8 Counsel warrant and represent they are expressly authorized by the Parties whom they represent to
9 negotiate this Stipulation of Settlement and to take all appropriate actions required or permitted to
10 be taken by such Parties pursuant to this Stipulation of Settlement to effectuate its terms, and to
11 execute any other documents required to effectuate the terms of this Stipulation of Settlement. The
12 Parties, Class Counsel and Defense Counsel shall cooperate with each other and use their best
13 efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach
14 agreement on the form or content of any document needed to implement the Settlement, or on any
15 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the
16 Parties may seek the assistance of the Court to resolve such disagreement. The person signing this
17 Stipulation of Settlement on behalf of the Defendants represent and warrant that he/she is
18 authorized to sign this Stipulation of Settlement on behalf of Defendants. Plaintiffs represent and
19 warrants that they are authorized to sign this Stipulation of Settlement and that they have not
20 assigned any claim, or part of a claim, covered by this Settlement of Settlement to a third party.
21 The Parties have cooperated in the drafting and preparation of this Stipulation of Settlement.
22 Hence, in any construction made of this Stipulation of Settlement, the same shall not be construed
23 against any of the Parties.

24 72. Binding on Successors and Assigns. This Stipulation of Settlement shall be
25 binding upon, and inure to the benefit of, the successors and assigns of the Parties.

26 73. California Law Governs. All terms of this Stipulation of Settlement and the
27 Exhibits hereto shall be governed by and interpreted according to the laws of the State of
28

California, without giving effect to any law that would cause the laws of any jurisdiction other than the State of California to be applied.

74. Counterparts. This Stipulation of Settlement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

75. This Settlement is Fair, Adequate, and Reasonable. Plaintiffs represent that this Settlement is a fair, adequate, and reasonable settlement of the Action and they have arrived at this Settlement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential.

76. Jurisdiction of the Court. Following entry of the Final Order and Judgment, the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Stipulation of Settlement and all orders and judgments entered in connection therewith, and the Parties, Class Counsel and Defense Counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Stipulation of Settlement and all orders and judgments entered in connection therewith.

77. Invalidity of Any Provision. Before declaring any term or provision of this Stipulation of Settlement invalid, the Parties request that the Court first attempt to construe the terms or provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Stipulation of Settlement as valid and enforceable. In the event the Court declares any material provision of this Stipulation of Settlement invalid, the Stipulation of Settlement will be void and its terms will be of no force and effect, except as otherwise agreed to by the Parties in writing.

78. Binding Nature of Notice of Class Action Settlement. It is agreed that, because the Class Members are so numerous, it is impossible or impractical to have each Class Member execute the Stipulation of Settlement. The Class Notice shall advise all Class Members of the binding nature of the Settlement, and the release of Released Claims and shall have the same force and effect as if this Stipulation of Settlement were executed by each Participating Class Member.

1 IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this
2 Joint Stipulation of Class Action and PAGA Settlement and Release between Plaintiffs, on the
3 one hand, and Defendants, on the other hand, as of the date(s) set forth below:

4
5 Dated: _____

6 Plaintiff Jonathan Elias

7
8 Dated: _____

9 Plaintiff Gracie Rodriguez

10 **TM ONE, LLC dba "Mass Markets, Inc."**
11 **MARLOW COMPANIES INC. dba "Mass**
12 **Markets, Inc."**

13 Dated: _____

14
15 _____
16 Please Print Name of Authorized Signatory

17 **APPROVED AS TO FORM**

18 **LAW OFFICES OF KEVIN T. BARNES**
19 **LAW OFFICES OF RAPHAEL A. KATRI**

20 Dated: _____

21 Kevin T. Barnes, Esq.
22 Raphael A. Katri, Esq.
23 Attorneys for Plaintiff Jonathan Elias

24 **WILSHIRE LAW FIRM**

25 Dated: _____

26 Justin R. Marquez, Esq.
27 Benjamin H. Haber, Esq.
28 Arrash T. Fattahi, Esq.
Attorney for Plaintiff Gracie Rodriguez

///

EMILIO LAW GROUP, APC

Dated: _____

Justin G. Schmidt, Esq.
Laurie M. Cortez, Esq.
Attorneys for Defendants

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Jonathan Elias, et al. v. TM One, LLC dba “Mass markets, Inc.,” et al.
Superior Court of California – San Diego County
Case No. 37-2022-00032324-CU-OE-CTL

IF YOU WERE EMPLOYED BY DEFENDENTS IN CALIFORNIA AS AN HOURLY-PAID, NON-EXEMPT CALL CENTER EMPLOYEE WHO WORKED ANY TIME DURING THE FOLLOWING CLASS PERIOD: AUGUST 12, 2018, THROUGH MAY 31, 2024

YOU ARE ENTITLED TO RECEIVE MONEY FROM A CLASS AND REPRESENTATIVE ACTION SETTLEMENT

The Court approved this notice. This is not an advertisement.

You are not being sued. However, your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
DO NOTHING	You will receive a payment from the Settlement. No action is required for you to receive a share of this Settlement.
EXCLUDE YOURSELF	You will not receive a share of the Settlement. ¹ This is the only option that allows you to file your own lawsuit against Defendants for the claims released in this Settlement.
OBJECT	If you choose, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement.

WHAT IS IN THIS NOTICE

1.	Why Should You Read This Notice?	Page 2
2.	What Is the Class Action Settlement?	Page 2
3.	What Is the Case About?	Page 2
4.	How Much Can I Expect to Receive?	Page 3
5.	Why Did the Defendants Join in This Notice?	Page 3
6.	Who Are the Plaintiffs in This Class Action?	Page 3
7.	Who Are the Attorneys Representing the Parties?	Page 4
8.	What Are My Rights? How Will My Rights Be Affected?.....	Page 4
9.	How Will the Attorneys for the Class Be Paid?	Page 6
10.	What If I Lose My Settlement Check?	Page 7

¹ Regardless of whether you exclude yourself from the Settlement, you will still receive a portion of the settlement for release of the penalty claim pursuant to the Private Attorneys General Act, Labor Code sections 2698-2699.6 (“PAGA”).

1. *Why Should You Read This Notice?*

You have received this Notice because records indicate that you are a member of the settlement class settled in this action.

The settlement class is comprised of all current and former California hourly-paid non-exempt Call Center employees (“Class Members”) employed by Defendants TM One, LLC dba “Mass Markets, Inc.” and Marlowe Companies Inc. also known as “MCI” dba “Mass Markets, Inc. (“Defendants”) at any time from August 12, 2018, through May 31, 2024.

This Notice tells you of your rights to share in the Settlement. There was a Preliminary Approval hearing on June 28, 2024, at 8:30 a.m., in the San Diego County Superior Court. Judge Blaine K. Bowman determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and that a final determination of the issues will be made at the final approval hearing. Judge Bowman also ordered that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on [REDACTED], 2024, at [REDACTED] a.m./p.m. in Department C-74, of the San Diego County Superior Court located at 330 West Broadway, San Diego, California 92101. The Final Approval Hearing may be continued to another date without further notice. Class Members may appear remotely at the Final Approval Hearing and should contact the court clerk for Department C-74 at 619-450-7074 for instructions on how to appear remotely.

2. *What is the Class Action Settlement?*

The Court must approve the terms of the Settlement described herein as fair, adequate, and reasonable to the Class Members. The Settlement will affect all members of the class. You may get money from the Class and Representative Action Settlement. This Notice will explain the terms of the Settlement and the amount of money you may receive under the Settlement.

3. *What Is the Case About?*

Plaintiffs contend that Defendants violated the California Labor Code by: (1) Failure To Pay Minimum and Straight Time Wages; (2) Failure to Pay All Hours Worked; (3) Failure to Pay Overtime Wages At The Legal Pay Rate; (4) Failure To Pay All Wages; (5) Violations of Labor Code §226.2 Regarding Rest Periods ; (6) Violations of Labor Code §226.2 Regarding Rest Period Pay Rate; (7) Failure To Pay Meal Periods; (8) Failure to Authorize and Permit Rest Periods; (9) Failure to Pay All Earned Wages Twice Per Month; (10) Failure to Maintain Accurate Records of Hours Worked and Meal Periods; (11) Failure To Timely Pay Final Wages at Termination; (12) Failure to Provide Accurate Itemized Wage Statements; and (13) Violation of California Business and Professions Code 17200, et seq. for the labor code claims asserted in the Complaint. Plaintiffs also seeks civil penalties under the Private Attorneys General Act (“PAGA”) as set forth in Labor Code sections 2698-2699.6, which allows a private citizen to pursue civil penalties on behalf of the State of California Labor Workforce Development Agency (“LWDA”) related only to the

above Released Claims.

Defendants deny the allegations raised in the lawsuit and believe they have no liability for any of Plaintiffs' or the Class Members' claims under any statute, wage order, common law, or equitable theory.

The Parties reached a Settlement subject to Court approval as represented in the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement" or "Settlement Agreement"). Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Likewise, Defendants have decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling this lawsuit, Defendants do not admit, concede, or imply that it has done anything wrong or legally actionable.

4. *How Much Can I Expect to Receive?*

Defendants will pay a total sum of \$280,000 ("Maximum Settlement Amount"), which includes all settlement payments to Class Members, attorneys' fees and costs, costs of administering the Settlement, a payment to the LWDA under PAGA and the Class Representatives' Payment.

Defendants' records indicate that you worked approximately [REDACTED] workweeks during the Class Period. Based on these records, your estimated payment as a Class Member would be \$ [REDACTED].

Defendants' records indicate that you worked approximately [REDACTED] pay periods during the PAGA Period. Based on these records, your estimated payment under PAGA would be \$ [REDACTED].

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement. You should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

The front of every check issued for Individual Class Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically canceled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

5. *Why Did the Defendants Join in This Notice?*

Defendants do not admit any claim alleged in the lawsuit and deny that they owe money for any of the claims in this matter. Defendants are settling the lawsuit as a compromise. Defendants reserve the right to object to and defend themselves against any claim if, for any reason, the Settlement fails. The Court file has the Settlement documents with more information on the lawsuit.

6. *Who Are the Plaintiffs in This Class Action?*

Jonathan Elias and Gracie Rodriguez are the Plaintiffs and Class Representatives in this Class Action lawsuit. They are acting on behalf of themselves and on behalf of other members of the class and representing your interests as representative under PAGA.

7. *Who Are the Attorneys Representing the Parties?*

Class Counsel

Kevin T. Barnes, Esq.
LAW OFFICES OF KEVIN T. BARNES
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Greensboro, GA 30642-4519
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Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
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Los Angeles, California 90010
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Email: Justin@wilshirelawfirm.com

Defense Counsel

Justin G. Schmidt, Esq.
Laurie M. Cortez, Esq.
EMILIO LAW GROUP, APC
12832 Valley View St., Ste. 106
Garden Grove, CA 92845

8. *What are my Rights? How Will My Rights Be Affected?*

Class Counsel, appointed and approved by the Court for Settlement only, will represent you.

Participating in the Settlement

Under the Settlement, you will **automatically** receive a settlement payment unless you opt out by following the opt-out procedure set forth below.

This Notice of Settlement states the total number of workweeks you worked for Defendants during the Class Period. Your individual settlement payment as a Class Member will be based on that number. If you believe the information on this Notice is correct, then you do not need to take any further action to receive your settlement payment.

If you believe the workweek information shown above is incorrect, you must submit a written workweek dispute stating why you believe the listed workweeks are not correct. The workweek

dispute must be mailed or faxed to the Settlement Administrator (whose contact information is listed below) and must be postmarked no later than [REDACTED], 2024. You should submit to the Settlement Administrator documentation to support the number of workweeks you believe you worked during the Class Period. If there is a dispute about the workweeks you worked, the Settlement Administrator will review the records to resolve the dispute.

NOTE: UNLESS YOU DISPUTE THE WORKWEEK INFORMATION LISTED ABOVE OR OPT OUT OF THE SETTLEMENT, YOU WILL RECEIVE MONEY FROM THE SETTLEMENT BASED ON THE AMOUNTS SET FORTH ABOVE.

If you are a current employee of the Defendants, your decision as to whether or not to participate in this Settlement will not affect or in any way impact your employment.

Objecting to the Settlement

If you wish to Object to the Settlement in writing, you must submit a written Objection stating why you object to the Settlement. The Objection must be signed by you and include your full name, address, telephone number, and last four digits of your Social Security number. The Objection must be mailed or faxed to the Settlement Administrator (whose contact information is listed below) and must be postmarked no later than [REDACTED], 2024. Late Objections will not be considered.

You may also, if you wish, appear at the Final Approval Hearing set for [REDACTED], 2024 at [REDACTED] a.m./p.m. in Department C-74, of the San Diego County Superior Court and discuss your objections with the Court and the Parties, whether or not you submitted a prior written objection. You may appear on your own, or through a counsel retained by you at your expense. The Final Approval Hearing may be continued to another date without further notice.

IF YOU OBJECT TO THE SETTLEMENT, YOU WILL STILL RECEIVE YOUR SHARE OF THE SETTLEMENT IF THE COURT APPROVES THE SETTLEMENT.

Opting Out of the Settlement

If you wish to be excluded from participating in the Settlement, you must complete and sign a written request to Opt-Out to the Settlement Administrator via fax or at the address below requesting to be excluded from the Settlement. To be considered valid, your Opt-Out must be signed by you, and contain your name, address, telephone number, and the last four digits of your Social Security number. Your Opt-Out also must clearly indicate that you desire to be excluded from the Settlement. To be considered timely, your Opt-Out must be faxed or postmarked no later than [REDACTED], 2024. Late Opt-Outs will not be considered.

If you timely mail a complete and valid Opt-Out, you will no longer be a member of a Class and you will **not** be eligible to object to the terms of the Settlement or receive money under the Settlement except for that portion of the settlement allocated to PAGA penalty payments. Except for the PAGA release, you will not be bound by the terms of the Settlement, and may pursue any valid claims you may have, at your own expense, against Defendants. Individuals otherwise meeting the definition of Class Members who exclude themselves from the class pursuant and were employed during the PAGA Period shall still receive a payment for the amount of each such individual's estimated share of the PAGA Payment that was included by the Settlement Administrator in calculating the Claim Amount and shall still be bound by the PAGA release.

Effect of the Settlement on Your Rights

Upon final approval of the Settlement by the Court, all Participating Class Members will be deemed to have released the Released Parties from all Released Claims and PAGA Released Claims, as defined below. Regardless of whether an individual opts out of the Settlement, all Participating PAGA Members will be deemed to have released the Released Parties from all PAGA Released Claims.

“Released Parties” means Defendants and their agents, officers, employees, directors, owners, subsidiaries, affiliates, and parent companies.

“Released Claims” refers to all claims under state or local law, whether statutory, common law, or administrative law, whether in law or equity, for the claims that were pled in the PAGA Notice, Complaint and First Amended Complaint in the Elias Action and all the claims that were pled in the Rodriguez Action, based on the factual allegations therein, that arose during the Class Period, including: all claims under California Labor Code sections 201-204, 216, 221, 226, 226.2, 226.7, 510, 516, 558, 1194, 1197, 1198, 2699, and 2751. The settlement class shall also waive claims under the California Business and Professions Code Section 17200 and California’s Private Attorneys’ General Act based upon violations of the California Labor Code sections in the preceding section including injunctive relief; liquidated damages; interest; fees; and costs.

“PAGA Released Claims” refers to the release by all Class Members for all claims for PAGA that arise out of or relate to California Labor Code sections 201-204, 216, 221, 226, 226.2, 226.7, 510, 516, 558, 1194, 1197, 1198, 2699, and 2751 and California Business and Professions Code Section 17200 as pled in the PAGA Notice, Complaint and First Amended Complaint in the Elias Action, from August 12, 2018, through May 31, 2024. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), Class Members employed by Defendants on or after August 12, 2018, who exclude themselves from this Settlement shall still receive an Individual PAGA Payment directly from the Settlement Administrator for the amount of each such individual’s estimated share of the PAGA Payment as calculated by the Settlement Administrator..

Regardless of whether an individual opts out of the Settlement, all Participating PAGA Members will be deemed to have released Defendants of all PAGA Released Claims.

9. *How Will the Attorneys for the Class Be Paid?*

The attorneys for the Class Representatives and the Settlement Class will be paid from the gross settlement. The attorneys are seeking a fee not to exceed \$93,333.33 as well as reimbursement of their litigation costs, up to \$20,000. Plaintiffs are seeking Service Awards not to exceed \$10,000 to Class Representative Jonathan Elias and \$10,000 to Class Representative Gracie Rodriguez from the Settlement for their service as Class Representatives. Likewise, the Parties agree that \$10,000 shall be allocated to settle the PAGA claim, with \$7,500 to be paid to the LWDA, and the remaining \$2,500 to be divided equally among the Class Members and included in their Individual Settlement Award payments. The Settlement Administrator estimates that the cost of administration will not exceed \$13,000. All of these amounts are to be deducted from the gross settlement, with the remainder available for distributions to Class Members who do not Opt-Out.

10. What If I Lose My Settlement Check?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund at ucpi.sco.ca.gov or (916) 445-5361 for instructions on how to retrieve the funds.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class Counsel, Kevin T. Barnes (323-549-9100) or email him at barnes@kbarnes.com, or contact the Settlement Administrator at the contact information listed below. Please refer to the Settlement Administrator.

TM One Settlement Administrator
c/o Rust Consulting, Inc.
[ADDRESS]
[PHONE NUMBER]
[WEBSITE]

You can find a copy of the Settlement Agreement as well as the Motions for Preliminary and Final Approval on the website of the TM One Settlement Administrator which is **XXXXXXX**.

DO NOT TELEPHONE THE COURT FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.

By Order of the San Diego County Superior Court, the Honorable Blaine K. Bowman.

EXHIBIT 2

NOTICE OF CLASS ACTION SETTLEMENT

Jonathan Elias, et al. v. TM One, LLC dba “Mass markets, Inc.,” et al.
Superior Court of California – San Diego County
Case No. 37-2022-00032324-CU-OE-CTL

IF YOU WERE EMPLOYED BY DEFENDENTS IN CALIFORNIA AS AN HOURLY-PAID, NON-EXEMPT CALL CENTER EMPLOYEE WHO WORKED ANY TIME DURING THE FOLLOWING CLASS PERIOD: AUGUST 12, 2018, THROUGH MAY 31, 2024

YOU ARE ENTITLED TO RECEIVE MONEY FROM A CLASS AND REPRESENTATIVE ACTION SETTLEMENT

The Court approved this notice. This is not an advertisement.

You are not being sued. However, your legal rights are affected whether you act or not.

PLEASE READ THIS NOTICE.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
INCLUDE THE FOLLOWING:	
DO NOTHING	You will receive a payment from the Settlement. No action is required for you to receive a share of this Settlement.
EXCLUDE YOURSELF	You will not receive a share of the Settlement. ¹ This is the only option that allows you to file your own lawsuit against Defendants for the claims released in this Settlement.
OBJECT	If you choose, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from receiving a portion of the Settlement.

WHAT IS IN THIS NOTICE

1.	Why Should You Read This Notice?	Page 2
2.	What Is the Class Action Settlement?	Page 2
3.	What Is the Case About?	Page 2
4.	How Much Can I Expect to Receive?	Page 3
5.	Why Did the Defendants Join in This Notice?	Page 3
6.	Who Are the Plaintiffs in This Class Action?	Page 3
7.	Who Are the Attorneys Representing the Parties?	Page 4
8.	What Are My Rights? How Will My Rights Be Affected?.....	Page 4
9.	How Will the Attorneys for the Class Be Paid?	Page 6
10.	What If I Lose My Settlement Check?	Page 7

¹ Regardless of whether you exclude yourself from the Settlement, you will still receive a portion of the settlement for release of the penalty claim pursuant to the Private Attorneys General Act, Labor Code sections 2698-2699.6 (“PAGA”).

1. *Why Should You Read This Notice?*

You have received this Notice because records indicate that you are a member of the settlement class settled in this action.

The settlement class is comprised of all current and former California hourly-paid non-exempt Call Center employees (“Class Members”) employed by Defendants TM One, LLC dba “Mass Markets, Inc.” and Marlowe Companies Inc. also known as “MCI” dba “Mass Markets, Inc. (“Defendants”) at any time from August 12, 2018, through May 31, 2024.

This Notice tells you of your rights to share in the Settlement. There was a Preliminary Approval hearing on June 28, 2024, at 8:30 a.m., in the San Diego County Superior Court. Judge Blaine K. Bowman determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and that a final determination of the issues will be made at the final approval hearing. Judge Bowman also ordered that you receive this Notice.

The Court will hold a Final Approval Hearing concerning the proposed Settlement on [REDACTED], 2024, at [REDACTED] a.m./p.m. in Department C-74, of the San Diego County Superior Court located at 330 West Broadway, San Diego, California 92101. The Final Approval Hearing may be continued to another date without further notice. Class Members may appear remotely at the Final Approval Hearing and should contact the court clerk for Department C-74 at 619-450-7074 for instructions on how to appear remotely.

2. *What is the Class Action Settlement?*

The Court must approve the terms of the Settlement described herein as fair, adequate, and reasonable to the Class Members. The Settlement will affect all members of the class. You may get money from the Class and Representative Action Settlement. This Notice will explain the terms of the Settlement and the amount of money you may receive under the Settlement.

3. *What Is the Case About?*

Plaintiffs contend that Defendants violated the California Labor Code by: (1) Failure To Pay Minimum and Straight Time Wages; (2) Failure to Pay All Hours Worked; (3) Failure to Pay Overtime Wages At The Legal Pay Rate; (4) Failure To Pay All Wages; (5) Violations of Labor Code §226.2 Regarding Rest Periods ; (6) Violations of Labor Code §226.2 Regarding Rest Period Pay Rate; (7) Failure To Pay Meal Periods; (8) Failure to Authorize and Permit Rest Periods; (9) Failure to Pay All Earned Wages Twice Per Month; (10) Failure to Maintain Accurate Records of Hours Worked and Meal Periods; (11) Failure To Timely Pay Final Wages at Termination; (12) Failure to Provide Accurate Itemized Wage Statements; and (13) Violation of California Business and Professions Code 17200, et seq. for the labor code claims asserted in the Complaint. Plaintiffs also seeks civil penalties under the Private Attorneys General Act (“PAGA”) as set forth in Labor Code sections 2698-2699.6, which allows a private citizen to pursue civil penalties on behalf of the State of California Labor Workforce Development Agency (“LWDA”) related only to the

above Released Claims.

Defendants deny the allegations raised in the lawsuit and believe they have no liability for any of Plaintiffs' or the Class Members' claims under any statute, wage order, common law, or equitable theory.

The Parties reached a Settlement subject to Court approval as represented in the Joint Stipulation of Class Action and PAGA Settlement and Release (the "Settlement" or "Settlement Agreement"). Class Counsel believes that the Settlement is fair, reasonable, and adequate, and that it is in the best interests of Class Members. Likewise, Defendants have decided that settlement is favorable because it avoids the time, risk, and expense of a lengthy lawsuit, and settlement immediately resolves, finally and completely, the pending and potential claims. By settling this lawsuit, Defendants do not admit, concede, or imply that it has done anything wrong or legally actionable.

4. *How Much Can I Expect to Receive?*

Defendants will pay a total sum of \$280,000 ("Maximum Settlement Amount"), which includes all settlement payments to Class Members, attorneys' fees and costs, costs of administering the Settlement, a payment to the LWDA under PAGA and the Class Representatives' Payment.

Defendants' records indicate that you worked approximately [REDACTED] workweeks during the Class Period. Based on these records, your estimated payment as a Class Member would be \$ [REDACTED].

Defendants' records indicate that you worked approximately [REDACTED] pay periods during the PAGA Period. Based on these records, your estimated payment under PAGA would be \$ [REDACTED].

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your payment under the Settlement. You should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

The front of every check issued for Individual Class Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically canceled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

5. *Why Did the Defendants Join in This Notice?*

Defendants do not admit any claim alleged in the lawsuit and deny that they owe money for any of the claims in this matter. Defendants are settling the lawsuit as a compromise. Defendants reserve the right to object to and defend themselves against any claim if, for any reason, the Settlement fails. The Court file has the Settlement documents with more information on the lawsuit.

6. *Who Are the Plaintiffs in This Class Action?*

Jonathan Elias and Gracie Rodriguez are the Plaintiffs and Class Representatives in this Class Action lawsuit. They are acting on behalf of themselves and on behalf of other members of the class and representing your interests as representative under PAGA.

7. *Who Are the Attorneys Representing the Parties?*

Class Counsel

Kevin T. Barnes, Esq.
LAW OFFICES OF KEVIN T. BARNES
1041 Parkside Commons, Suite 101
Greensboro, GA 30642-4519
Tel.: (213) 793-9100
Email: Barnes@kbarnes.com

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Tel.: (310) 940-2034 / Fax: (310) 733-5644
Email: RKatri@socallaborlawyers.com

Justin F. Marquez, Esq.
Benjamin H. Haber, Esq.
Arrash T. Fattahi
WILSHIRE LAW FIRM
3055 Wilshire Blvd., 12th Floor
Los Angeles, California 90010
Tel: (213) 381-9988/ Fax: (213) 381-9989
Email: Justin@wilshirelawfirm.com

Defense Counsel

Justin G. Schmidt, Esq.
Laurie M. Cortez, Esq.
EMILIO LAW GROUP, APC
12832 Valley View St., Ste. 106
Garden Grove, CA 92845

8. *What are my Rights? How Will My Rights Be Affected?*

Class Counsel, appointed and approved by the Court for Settlement only, will represent you.

Participating in the Settlement

Under the Settlement, you will **automatically** receive a settlement payment unless you opt out by following the opt-out procedure set forth below.

This Notice of Settlement states the total number of workweeks you worked for Defendants during the Class Period. Your individual settlement payment as a Class Member will be based on that number. If you believe the information on this Notice is correct, then you do not need to take any further action to receive your settlement payment.

If you believe the workweek information shown above is incorrect, you must submit a written workweek dispute stating why you believe the listed workweeks are not correct. The workweek

dispute must be mailed or faxed to the Settlement Administrator (whose contact information is listed below) and must be postmarked no later than _____, 2024. You should submit to the Settlement Administrator documentation to support the number of workweeks you believe you worked during the Class Period. If there is a dispute about the workweeks you worked, the Settlement Administrator will review the records to resolve the dispute.

NOTE: UNLESS YOU DISPUTE THE WORKWEEK INFORMATION LISTED ABOVE OR OPT OUT OF THE SETTLEMENT, YOU WILL RECEIVE MONEY FROM THE SETTLEMENT BASED ON THE AMOUNTS SET FORTH ABOVE.

If you are a current employee of the Defendants, your decision as to whether or not to participate in this Settlement will not affect or in any way impact your employment.

Objecting to the Settlement

If you wish to Object to the Settlement in writing, you must submit a written Objection stating why you object to the Settlement. The Objection must be signed by you and include your full name, address, telephone number, and last four digits of your Social Security number. The Objection must be mailed or faxed to the Settlement Administrator (whose contact information is listed below) and must be postmarked no later than _____, 2024. Late Objections will not be considered.

You may also, if you wish, appear at the Final Approval Hearing set for _____, 2024 at _____ a.m./p.m. in Department C-74, of the San Diego County Superior Court and discuss your objections with the Court and the Parties, whether or not you submitted a prior written objection. You may appear on your own, or through a counsel retained by you at your expense. The Final Approval Hearing may be continued to another date without further notice.

IF YOU OBJECT TO THE SETTLEMENT, YOU WILL STILL RECEIVE YOUR SHARE OF THE SETTLEMENT IF THE COURT APPROVES THE SETTLEMENT.

Opting Out of the Settlement

If you wish to be excluded from participating in the Settlement, you must complete and sign a written request to Opt-Out to the Settlement Administrator via fax or at the address below requesting to be excluded from the Settlement. To be considered valid, your Opt-Out must be signed by you, and contain your name, address, telephone number, and the last four digits of your Social Security number. Your Opt-Out also must clearly indicate that you desire to be excluded from the Settlement. To be considered timely, your Opt-Out must be faxed or postmarked no later than _____, 2024. Late Opt-Outs will not be considered.

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Effect of the Settlement on Your Rights

Upon final approval of the Settlement by the Court, all Participating Class Members will be deemed to have released the Released Parties from all Released Claims and PAGA Released Claims, as defined below. Regardless of whether an individual opts out of the Settlement, all Participating PAGA Members will be deemed to have released the Released Parties from all PAGA Released Claims.

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“PAGA Released Claims” refers to the release by all Class Members for all claims for PAGA that arise out of or relate to California Labor Code sections 201-204, 216, 221, 226, 226.2, 226.7, 510, 516, 558, 1194, 1197, 1198, 2699, and 2751 and California Business and Professions Code Section 17200 as pled in the PAGA Notice, Complaint and First Amended Complaint in the Elias Action, from August 12, 2018, through May 31, 2024. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), Class Members employed by Defendants on or after August 12, 2018, who exclude themselves from this Settlement shall still receive an Individual PAGA Payment directly from the Settlement Administrator for the amount of each such individual’s estimated share of the PAGA Payment as calculated by the Settlement Administrator..

Regardless of whether an individual opts out of the Settlement, all Participating PAGA Members will be deemed to have released Defendants of all PAGA Released Claims.

9. *How Will the Attorneys for the Class Be Paid?*

The attorneys for the Class Representatives and the Settlement Class will be paid from the gross settlement. The attorneys are seeking a fee not to exceed \$93,333.33 as well as reimbursement of their litigation costs, up to \$20,000. Plaintiffs are seeking Service Awards not to exceed \$10,000 to Class Representative Jonathan Elias and \$10,000 to Class Representative Gracie Rodriguez from the Settlement for their service as Class Representatives. Likewise, the Parties agree that \$10,000 shall be allocated to settle the PAGA claim, with \$7,500 to be paid to the LWDA, and the remaining \$2,500 to be divided equally among the Class Members and included in their Individual Settlement Award payments. The Settlement Administrator estimates that the cost of administration will not exceed \$13,000. All of these amounts are to be deducted from the gross settlement, with the remainder available for distributions to Class Members who do not Opt-Out.

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IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may call Class Counsel, Kevin T. Barnes (323-549-9100) or email him at barnes@kbarnes.com, or contact the Settlement Administrator at the contact information listed below. Please refer to the Settlement Administrator.

TM One Settlement Administrator
c/o Rust Consulting, Inc.
[ADDRESS]
[PHONE NUMBER]
[WEBSITE]

You can find a copy of the Settlement Agreement as well as the Motions for Preliminary and Final Approval on the website of the TM One Settlement Administrator which is **XXXXXXX**.

DO NOT TELEPHONE THE COURT FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.

By Order of the San Diego County Superior Court, the Honorable Blaine K. Bowman.

EXHIBIT 3

Kevin T. Barnes, Esq. (#138477)
LAW OFFICES OF KEVIN T. BARNES
1041 Parkside Commons, Suite 101
Greensboro, GA 30642-4519
Tel.: (213) 793-9100
Email: Barnes@kbarnes.com

Raphael A. Katri, Esq. (#221941)
LAW OFFICES OF RAPHAEL A. KATRI
8549 Wilshire Boulevard, Suite 200
Beverly Hills, CA 90211-3104
Tel.: (310) 940-2034 / Fax: (310) 733-5644
Email: RKatri@socallaborlawyers.com

Attorneys for Plaintiff, JONATHAN ELIAS,
on behalf of himself and all others similarly situated,

Additional Plaintiffs' Counsel on Next Page

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

JONATHAN ELIAS, on behalf of himself
and all other similarly situated aggrieved
employees,

Plaintiffs,

v.

TMONE, LLC d/b/a "Mass Markets, Inc.," a
Delaware limited liability company;
MARLOWE COMPANIES INC. also
known as "MCI" d/b/a "Mass Markets,
Inc.," a California entity, form unknown;
and DOES 1 to 10, inclusive,

Defendants.

CLASS ACTION

Case No.: 37-2022-00032324-CU-OE-CTL

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

Preliminary Approval Hearing:

Date: June 28, 2024

Time: 8:30 a.m.

Dept: C-74

Honorable Blaine K. Bowman
Department C-74

Action filed: August 12, 2022
Trial Date: None Set

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Additional Counsel for Plaintiffs:

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Attorneys for Plaintiff JONATHAN ELIAS, on
behalf of himself and all others similarly situated

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Attorneys for Plaintiff GRACIE RODRIGUEZ, on
behalf of herself and all others similarly situated

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1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 On June 24, 2024, the Court conducted a hearing on the unopposed Motion for
3 Preliminary Approval of Class and Representative Action Settlement filed by named Plaintiffs
4 Jonathan Elias and Gracie Rodriguez on behalf of themselves and all others similarly situated,
5 (hereinafter “Plaintiffs”). The Court has reviewed and considered the Memorandum of Points and
6 Authorities in support of the Motion, the Declarations of Counsel and the exhibits in support of
7 the Motion, including the Joint Stipulation of Class Action and PAGA Settlement and Release
8 (“Settlement Agreement” or “Settlement”) between Plaintiffs and Defendants TM One, LLC dba
9 “Mass Markets, Inc.” and Marlowe Companies Inc. also known as “MCI” dba “Mass Markets, Inc.”
10 (hereinafter “Defendants”). (Plaintiffs and Defendants shall be referred to collectively as the
11 “Parties”).

12 This Order hereby incorporates by reference the definitions in the Settlement Agreement
13 as though fully set forth herein, and all terms used herein shall have the same meaning as set
14 forth in the Settlement Agreement.

15 NOW THEREFORE, having read and considered the foregoing, the Court **HEREBY**
16 **MAKES THE FOLLOWING FINDINGS:**

17 1. The Court finds on a preliminary basis that the proposed Settlement falls within
18 the range of reasonableness, and the terms of Settlement, as set forth in the Settlement
19 Agreement, are presumptively fair, adequate and reasonable to the Class and, therefore, meet the
20 requirements for preliminary approval, subject only to any objections that may be raised before
21 or at the Final Fairness and Approval Hearing. It appears to the Court that the Settlement’s
22 terms are fair, adequate, and reasonable as to all potential Class Members when balanced
23 against the probable outcome of further litigation, given the risks relating to liability and
24 damages. It further appears that extensive investigation and research has been conducted such
25 that counsel for the Parties at this time are reasonably able to evaluate their respective positions.
26 It further appears to the Court that the Settlement at this time would avoid substantial additional
27 costs by all Parties, as well as the delay and risks that would be presented by the further
28 prosecution of the Action. It appears the Settlement has been reached as a result of intensive,

1 arm's-length negotiations utilizing an experienced third party neutral.

2 2. The Court further finds, for settlement purposes only, that the requirements of
3 California Code of Civil Procedure §382 and California Rules of Court, Rule 3.760 *et seq.* are
4 satisfied. Therefore, the Court certifies, for settlement purposes only, the following Class
5 described in the Motion for Preliminary Approval and Settlement Agreement:

6 All hourly paid, non-exempt Call Center employees employed by Defendants in the State
7 of California during the Class Period (defined as August 12, 2018, through May 31, 2024). It
8 shall be an opt-out class.

9 3. The Court further finds that the moving papers presented for the Court's review
10 set forth a plan to provide proper notice to the Class of the terms of the Settlement and the
11 options available to the Class, including the ability of the Class Members to Opt-Out or submit a
12 Request for Exclusion to the Settlement and not be bound by the Settlement Agreement or
13 receive any Settlement Payment under it; to object to the terms of the Settlement; or to do
14 nothing and receive a Settlement Payment and be bound by the terms of the Settlement.
15 Plaintiffs have submitted to the Court a proposed Notice of Class Settlement.

16 As a result, for good cause appearing, **IT IS HEREBY ORDERED THAT:**

17 1. The Court hereby preliminarily approves the proposed Settlement upon the
18 terms, conditions, and all release language set forth in the Settlement Agreement.

19 2. The Court conditionally certifies and approves, for settlement purposes only, the
20 Class described above.

21 3. For the purposes of this Settlement, the Law Offices of Kevin T. Barnes, The Law
22 Office of Raphael A. Katri, and Wilshire Law Firm ("Class Counsel") are hereby appointed as
23 Class Counsel and shall represent the Class Members in this Action. Any Class Member may
24 enter an appearance in the Action, at their own expense, either individually or through counsel of
25 their own choice; however, if they do not enter an appearance, they will be represented by Class
26 Counsel.

27 4. For the purposes of this Settlement, Plaintiff Jonathan Elias and Plaintiff Gracie
28 Rodriguez are hereby appointed as the Class Representatives for the Class.

1 5. The Court confirms Rust Consulting, Inc. as the Settlement Administrator. The
2 procedures for paying the Settlement Administrative Costs, as set forth in the Settlement
3 Agreement, are approved. Rust Consulting, Inc. is directed to perform all responsibilities of the
4 Settlement Administrator as set forth in the Settlement Agreement. Rust Consulting, Inc. will
5 also post the Judgment in this matter on their website once entered.

6 6. The Court hereby approves, as to form and content, the Notice of Class
7 Settlement attached as **Exhibit 1** to the Settlement Agreement (“Notice”). The Court finds that
8 the dates and procedure for mailing and distributing the Notice of Class Settlement in the
9 manner set forth in Paragraph 7 of this Order meet the requirements of due process and are the
10 best notice practicable under the circumstances and shall constitute due and sufficient notice to
11 all persons entitled thereto.

12 7. The Court directs the mailing of the Court-approved Notice via first class mail to
13 the Class Members in accordance with the schedule and procedures set forth in the Settlement
14 Agreement.

15 a. Within fifteen (15) calendar days of the date of preliminary approval of this
16 Settlement, Defendants shall provide to the Settlement Administrator the
17 Class List; and

18 b. Within fifteen (15) calendar days of receiving the Class List from Defendants
19 the Settlement Administrator shall mail by First-Class United States mail the
20 Notice of Class Settlement to each Class Member. The Settlement
21 Administrator shall conduct a National Change of Address database search
22 before mailing and will also use the most recent address available to the
23 Settlement Administrator for mail delivery. Any returned mail with a
24 forwarding address from the U.S. Postal Service shall be promptly re-mailed
25 to the new address. The Settlement Administrator shall perform a skip trace
26 search for a new address for any returned mail without a forwarding address.

27 8. The procedures for Class Members to Opt-Out by submitting a Request for
28 Exclusion, as set forth in the Notice of Class Settlement and Settlement Agreement, are

1 approved. The time for Class Members to submit a Request for Exclusion shall be forty-five
2 (45) days after the date of the first mailing of the Notices of Class Settlement. This date shall be
3 extended by ten (10) calendar dates if the notice is returned as undeliverable and then remailed
4 to a correct or forwarding address of a Class Member.

5 9. The procedures for Class Members to object to the Settlement, as set forth in the
6 Notice of Class Settlement and Settlement Agreement, are approved. The time for Class
7 Members to object to the Settlement shall be forty-five (45) days after the date of the first
8 mailing of the Notices of Class Settlement. This date shall be extended by ten (10) calendar
9 dates if the notice is returned as undeliverable and then remailed to a correct or forwarding
10 address of a Class Member. Class Members may appear at the Final Approval Hearing, on their
11 own or through a counsel retained at their expense, to present their objection, whether or not
12 they submitted a prior written objection as provided in the Settlement Agreement.

13 10. The procedures for Class Members to dispute the number of workweeks worked,
14 as set forth in the Notice of Class Settlement and Settlement Agreement, are approved. The
15 time for Class Members to submit a workweek dispute shall be forty-five (45) days after the
16 date of the first mailing of the Notices of Class Settlement. This date shall be extended by ten
17 (10) calendar dates if the notice is returned as undeliverable and then remailed to a correct or
18 forwarding address of a Class Member.

19 11. The Court hereby preliminarily approves the definition and disposition of the
20 Class Settlement Amount as that term is defined in the Settlement Agreement. The Court
21 preliminarily approves the distribution of the Class Settlement Amount, all subject to the
22 Court's final approval of the Settlement at the Final Approval Hearing. Assuming the
23 Settlement receives final approval, Defendants shall be required to pay only the Class
24 Settlement Amount in the total amount of \$280,000 plus the employer's share of taxes due as a
25 result of this Settlement.

26 12. A Final Approval Hearing (the "Hearing") shall be held on _____,
27 2024 at _____ a.m./p.m. before the Honorable Blaine K. Bowman in Department C-74 of the
28 San Diego County Superior Court. The purpose of such Hearing will be to: (a) determine

whether the proposed Settlement should be finally approved by the Court as fair, reasonable and adequate; (b) determine the reasonableness of Class Counsel's request for attorneys' fees and costs and amount to be awarded; (c) determine the reasonableness of the Class Representatives' Service Awards requested for the Class Representatives and amount to be awarded; and (d) order entry of Judgment in the Class Action, which shall constitute a complete release and bar with respect to the Released Claims.

13. Class Counsel shall file and serve all papers in support of the Motion for Final Approval and any application for reimbursement of attorneys' fees and costs, including any costs associated with or incurred by the Settlement Administrator, by _____, 2024.

14. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. However, Class Counsel or the Settlement Administrator will give notice to any objecting party of any continuance of the Final Approval Hearing.

15. All further proceedings in this Action shall be stayed except such proceedings necessary to review, approve, and implement this Settlement.

16. In the event: (i) the Court does not finally approve the Settlement as contemplated by the Settlement Agreement; (ii) the Court does not enter a Final Approval Order as contemplated by the Settlement Agreement, which becomes final as a result of the occurrence of the Effective Date (as that term is defined by in the Settlement Agreement); or (iii) the Settlement does not become final for any other reason, the Settlement and any related Class shall be null and void and any order or judgment entered by this Court in furtherance of the Settlement shall be deemed as void from the beginning. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of the Settlement, and the Parties shall proceed in all respects as if no Class had been certified and the Settlement Agreement had not been executed.

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1 17. Neither the Settlement, preliminarily approved or not, nor any exhibit, document
2 or instrument delivered hereunder, nor any statement, transaction or proceeding in connection
3 with the negotiation, execution or implementation of the Settlement, shall be admissible in
4 evidence for any reason except as provided in the Settlement Agreement. The Court has made
5 no findings on the merits and the Defendants have denied the allegations in the operative
6 complaint.

7 **IT IS SO ORDERED.**

8 **Dated:** _____, 2024

Honorable Blaine K. Bowman
Judge of the Superior Court

EXHIBIT 4

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Attorneys for Plaintiff, JONATHAN ELIAS,
 on behalf of himself and all others similarly situated,

Additional Plaintiffs' Counsel on Next Page

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

JONATHAN ELIAS, on behalf of himself
 and all other similarly situated aggrieved
 employees,

Plaintiffs,

v.

TMONE, LLC d/b/a "Mass Markets, Inc.," a
 Delaware limited liability company;
 MARLOWE COMPANIES INC. also
 known as "MCI" d/b/a "Mass Markets,
 Inc.," a California entity, form unknown;
 and DOES 1 to 10, inclusive,

Defendants.

CLASS ACTION

Case No.: 37-2022-00032324-CU-OE-CTL

**DECLARATION OF CLASS
 REPRESENTATIVE JONATHAN ELIAS
 IN SUPPORT OF PLAINTIFF'S
 MOTION FOR PRELIMINARY
 APPROVAL OF CLASS ACTION AND
 PAGA SETTLEMENT**

Preliminary Approval Hearing:

Date: June 28, 2024

Time: 8:30 a.m.

Dept: C-74

Honorable Blaine K. Bowman
 Department C-74

Action filed: August 12, 2022
 Trial Date: None Set

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Additional Counsel for Plaintiffs:

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Attorneys for Plaintiff JONATHAN ELIAS, on
behalf of himself and all others similarly situated

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Attorneys for Plaintiff GRACIE RODRIGUEZ, on
behalf of herself and all others similarly situated

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DECLARATION OF CLASS REPRESENTATIVE

I, Jonathan Elias, declare as follows:

1. I am a competent adult, over the age of eighteen and am the Class Representative Plaintiffs in the matter Jonathan Elias v. TM One, LLC dba "Mass Markets, Inc." and Marlowe Companies Inc. also known as "MCI" dba "Mass Markets, Inc." The foregoing is based upon my personal knowledge and, if called as a witness, I could and would competently testify thereto.

2. I worked as a Call Center employee working in the LifeLock Account/Department from September 2021 to November 2021. I worked in the San Diego location in California.

3. I am familiar with the work involved in prosecuting the Class Action against my former employer TM One. I have had numerous in-person and telephonic meetings with my attorneys. I am familiar with the client meetings, discovery conducted, settlement meetings, and have participated in all stages of the litigation up to and including preparation for preliminary approval of class action settlement on behalf of the Class.

4. When I worked for Defendants, I was subjected to the same labor code claims involving overtime rate, off the clock, separate pay for rest breaks, meal periods, rest periods, wage statements, and failure to pay all wages due when I was no longer an employee of TM One penalties as all other Class Members.

5. I have and will continue to adequately represent the interests of all members of the proposed Class I seek to represent. My claims are typical of these Class Members and involve the same common issues. I have no interests which are inconsistent with any of these Class Members.

6. I have always considered the interests of the other Class Members just as I have my own interests and understand that I have to put the interests of the other Class Members before my own. I have participated, and will continue to participate, in this lawsuit up to and through the time of judgment. I have volunteered to represent the other Class Members because of the importance of the case and so that other Class Members can benefit from the enforcement of the law and the savings of time, money and effort that should result in the settlement of this

1 case on a class basis.

2 7. I believe that the Class Action Settlement obtained on behalf of the Class is fair
3 and reasonable in view of the issues and risks involved with the case.

4 8. I believe that the Class Service Award of \$10,000 for me is fair and reasonable.
5 This service award takes into consideration the time, effort, risks, stress, sacrifice of signing a
6 general release of all claims over just wage and hour claims, as well as the benefit provided to all
7 Class Members as a result of my involvement in this litigation.

8 9. I have spent approximately 45 hours on this case. This includes the initial time I
9 spent investigating these claims and all work for this litigation which lasted over two years and a
10 half, meeting with my attorneys, the mediation prep and participating in the mediation, and all
11 follow-up work with my attorneys. I believe I have been diligent and acted above and beyond
12 that which is expected of a Class Representative throughout all stages of the litigation, up to and
13 including final approval of Class Action Settlement.

14 10. Furthermore, it is my opinion that the service award is fair and reasonable because
15 in addition to the many hours spent participating in this case, I accepted the potential risk of
16 being liable for the opposing parties' costs if we were unsuccessful in this lawsuit. My attorneys
17 told me these costs could be tens of thousands of dollars or more based on the type of case
18 involved and length of the litigation. I believed in this case and was willing to be a Class
19 Representative Plaintiff knowing the risks involved.

20 11. I signed a general release, so I am not only giving up my wage and hour claims,
21 but I am also giving up all claims I had against my former employer. Since I have signed a
22 general release for any and all claims related to my employment with Defendant, I can't pursue
23 any other claims against Defendant.

24 12. This litigation has also resulted in a valuable benefit to the Class Members who
25 will participate in the monetary payout of this Settlement because of my involvement. I have
26 been advised by my attorneys that **the average class member will receive a settlement**
27 **payment of approximately \$395 and the highest settlement payment will be approximately**
28 **\$3,065.** This is a great benefit to all Class Members.

Executed on June 4, 2024 at Spring Valley, California.

DECLARATION OF CLASS REPRESENTATIVE JONATHAN ELIAS IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

EXHIBIT 5

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Attorneys for Plaintiff GRACIE RODRIGUEZ

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

JONATHAN ELIAS, on behalf of himself and
all other similarly situated aggrieved employees,

Plaintiffs,

v.

TMONE, LLC d/b/a “Mass Markets, Inc.,” a
Delaware limited liability company;
MARLOWE COMPANIES INC. also known as
“MCI” d/b/a “Mass Markets, Inc.,” a California
entity, form unknown; and DOES 1 to 10,
inclusive,

Defendants.

Case No. 37-2022-00032324-CU-OE-CTL

[Assigned for all purposes to: Hon. Blaine K.
Bowman, Dept. C-74]

**DECLARATION OF GRACIE
RODRIGUEZ IN SUPPORT OF
PLAINTIFFS’ MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 28, 2024

Time: 8:30 a.m.

Dept: C-74

DECLARATION OF GRACIE RODRIGUEZ

I, Gracie Rodriguez, declare as follows:

1. I am an adult resident of the State of California, and, if called as a witness in this action, I would testify truthfully to the matters described in this declaration. All of the matters described in this declaration are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I make this declaration entirely of my own free will and choice. I have not been promised any benefit for doing so, and I have not been pressured into giving this declaration. Before signing this declaration, I was given the opportunity to review it, make changes, and verify the accuracy of its contents.

3. I am a former employee of Defendants TMOne LLC dba Mass Markets, Inc. and Marlow Companies Inc., also known as "MCI" d/b/a "Mass Markets, Inc." (collectively, "Defendants" or "TMone"). I worked at TMone from approximately July 2017 to approximately June 2021 as an hourly-paid, non-exempt employee. Throughout the entirety of my employment, I was subject to all of TMone's policies and practices that have been alleged as unlawful in the class action entitled *Gracie Rodriguez v. TM One, LLC dba "Mass Markets," et al.*, case number 47-2022-00015435-CU-OE-CTL and the separate PAGA action entitled *Gracie Rodriguez v. TM One, LLC dba "Mass Markets", et al.*, case number 37-2022-0006663.

4. I have actively participated in the litigation of this action. Prior to the commencing of this case, I provided Wilshire Law Firm and my attorneys a detailed account of the facts related to my employment with TMone, including, but not limited to, TMone's policy and practice of not providing its employees with California compliant meal and rest periods and requiring its employees to work "off-the-clock" during meal periods and after clocking out for the workday. Additionally, I provided my counsel with documentation in the form of wage statements and timekeeping records in support of the claims brought against TMone. These documents, along with the anecdotes I shared regarding my employment, assisted my attorneys in understanding the illegal policies and practices at TMone. I also regularly communicated with my attorneys and staff members of Wilshire Law firm via telephone and text messages.

1 5. My attorneys explained to me the risks and benefits of bringing forward a class
2 action matter. I understood the risks, both professionally and financially, associated with pursuing
3 a class action case and acting as the Class and PAGA Representative. I further understood that
4 pursuing the case as a class action rather than individually meant that it would take substantially
5 longer as a result of the multi-step approval process as mandated by the California Courts.
6 Although I was made aware that there was a possibility that I could receive nothing at the end, I
7 believed that it was important to ensure that TMone followed the law with respect to all of its
8 hourly-paid, non-exempt employees. Additionally, I understood that it was my responsibility to
9 act in the best interests of the Class and not just myself. In that respect, I understood my duties
10 and responsibilities to the proposed Class and carried out and will continue to carry out those duties
11 as necessary.

12 6. Throughout the course of the litigation, I maintained constant communication with
13 my attorneys and discussed pertinent matters relevant to the lawsuit. I asked questions when I
14 wanted to know what was being done to advance the interests of the Class or simply wanted an
15 update regarding the case. I understood that a recovery would not only benefit me but would
16 benefit my fellow coworkers as well. At all times, I made myself available to answer any questions
17 that my attorneys had about my employment.

18 7. This was especially true leading up to and during the mediation that took place on
19 February 28, 2024. In preparation for the mediation, I had extensive conversations with my
20 attorneys regarding the issues that we were going to advance during the negotiation process with
21 the mediator. During the mediation session, I was available to speak with my attorneys, answer
22 any questions that arose, and provide any additional documentation that was necessary to assist the
23 settlement discussions. Prior to the resolution of this matter, I reviewed and signed a Memorandum
24 of Understanding (“MOU”), which outlined the materials terms of the settlement. My attorneys
25 walked me through the individual clauses of the MOU and answered all the questions that I had. I
26 also reviewed the long-form settlement agreement in this case. I believe the settlement terms and
27 allocations are fair, adequate, and reasonable given the strength of the class claims and TMone’s
28 defenses.

Executed on 6/5/2024 at Spring Valley, California.

Gracie Rodriguez

EXHIBIT 6

Subject: Thank you for your Other Response or Document Submission
Date: Wednesday, June 5, 2024 at 3:42:50 PM Pacific Daylight Time
From: DIR PAGA Unit
To: Jacquelyn Luong

Caution: This email originated from outside of the organization. Please take care when clicking links or opening attachments unless you recognize the sender and know the content is safe.

06/05/2024 03:42:02 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Other Response or Document Submission

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm