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8 Richard Barajas, Felicia Bovenkerk,  
9 Timothy Collins, Becky Eads,  
10 Amanda Johnson, Suzanne Lansford, Joe Ortiz,  
11 Kevin Robinson, Janet Tinoco, and David Velasco

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

13 Richard Barajas, Felicia Bovenkerk,  
14 Timothy Collins, Becky Eads,  
15 Amanda Johnson, Suzanne Lansford,  
16 Joe Ortiz, Kevin Robinson, Janet Tinoco,  
17 and David Velasco appearing on behalf of  
18 themselves and all others similarly  
19 situated

18 Plaintiffs,

19 v.

20 Marlu Restaurant Group, Inc., Marlu  
21 LC, Inc., Marlu Stockton LLC, Prestige  
22 Management LLC, Smart Management  
23 & Co., Inc., Secret River, Inc., Central  
24 Valley QSR, Inc., G Maroni Company,  
25 Inc., Caljax, Inc., C Food Concepts,  
26 Inc., Aksan United Fortune, Inc.,  
27 Cardinal Appliance & Hardware, Inc.,  
28 Maritime Management Company, Marlu  
Investment Group, Anton Lutfi, Stephen  
Lutfi, Nader Lutfi and  
DOES 1 through 10, inclusive,

26 Defendants

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JAN 18 2017

Sherri K. Carter, Executive Officer/Clerk

By ~~CRYSTAL VARGAS~~, Deputy

CASE NO: BC630452

**JOINT STATEMENT REGARDING  
PAYROLL ELECTION FORM**

Hearing Date: February 9, 2017

Time: 2:30 p.m.

Dept.: 322

Judge: Hon. William F. Highberger

1 **I. INTRODUCTION**

2 At Paragraph 81 of the Stipulation and Settlement of Class Action Claims  
3 (“Agreement”) the parties agree that Defendants will provide a written Payroll Election  
4 Form allowing employees to specifically indicate whether they prefer a pay card, direct  
5 deposit or a traditional paycheck. The parties have been unable to agree on the exact  
6 wording of the Payroll Election Form. Defendants would like to use a form provided by  
7 Money Network, the same company that provides the pay card service that Defendants  
8 use. Plaintiffs propose a different form.

9 The parties hereby jointly asked the Court to select either the form offered by  
10 Plaintiffs or the form offered by Defendants. Plaintiffs’ proposed form is attached as  
11 Exhibit B to the Declaration of Allen Graves and Defendants’ proposed form is attached  
12 as Exhibit C. Regardless of which form is used, the parties agree that Defendants may  
13 continue to provide a full set of Money Network forms and promotional materials along  
14 with the Payroll Election Form.

15  
16 **II. DEFENDANTS’ STATEMENT**

17 Defendants’ proposed form was created in accordance with a third-party entity  
18 entitled the Money Network. Money Network has extensive experience with pay card  
19 programs and provides indemnification to the employer with regard to the legality of its  
20 pay card program. Use of the Money Network form provided by Defendants is necessary  
21 to preserve that indemnification.

22 California does not have any specific Labor Code regulations dictation the use of  
23 pay roll cards or forms thereto. However, there have been opinion letters issued by the  
24 California Division of Labor Standards Enforcement (“DLSE”) on the subject. In two  
25 such letters, the DLSE opined that payroll debit card programs do not violate the Labor  
26 Code where the employees are fully informed of the service and it is represented as an  
27 alternative method for wage payment for which their participation is optional. The DLSE  
28 also noted that California’s strong public policy of favoring the prompt and full payment

1 of wages can be satisfied by providing for at least one transaction per pay period without  
2 fee.

3 There has been very little case law in which payroll cards were challenged. One  
4 such matter was the federal court matter *Holak v. Kmart Corporation, et al* (E.D. Cal.  
5 December 12, 2012). No. 1:12-CV-00304 AWI MJS, 2012 WL 6202298 at \*7. In *Holak*,  
6 because the plaintiff had the option of being paid by direct deposit or payroll debit card,  
7 was made aware of the transactional fees that were associated with the payroll debit card,  
8 and was provided ways to withdraw her entire paycheck on demand without incurring any  
9 fees, including by going to a bank and withdrawing the funds from a teller, or by using a  
10 free pre-check to write herself a check and cashing it at a certain bank, the Court held that  
11 the plaintiff could not state a claim for violation of the California labor code.

12 Here, the form from Defendants and the Money Network, as well as the practice,  
13 are compliant with California law and follow the DLSE's guidance on this issue. Further  
14 the proposed form is compliant with the parties' Long Form Settlement Agreement –  
15 which, regarding the continued use of pay cards, states only as follows:

16 Within 15 days of the Effective Date, Defendants will provide  
17 a Payroll Election Form to each individual it employs in  
18 California as of that date. The Payroll Election Form will ask  
19 the employee to choose between being paid by check or debit  
20 card. Defendant will pay the cost of having a Payroll Election  
21 Form drafted by a neutral third-party and will provide the form  
22 for approval by Class Counsel no later than November 28,  
23 2016.

24 While Defendants appreciate Plaintiff's efforts to draft a form, Defendants have  
25 complied with the terms of the settlement agreement, provided a form fully compliant  
26 with California law and the DLSE's guidance, and would jeopardize indemnification  
27 should they be forced to use the form drafted by Plaintiff's counsel. For this reason,  
28 Defendants respectfully request that the Court allow Defendants to use their version of the  
form.

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**III. PLAINTIFF'S STATEMENT**

The form offered by Defendants is drafted by and provided by Money Network, the same company that provides the pay card service that Defendants use. Although Plaintiffs do not oppose Defendants providing employees with marketing materials from Money Network, Plaintiffs believe that the Payroll Election Form itself should be neutral. Plaintiffs believe that the form they have provided is more neutral than the one drafted by Money Network.

**IV. CONCLUSION**

The parties agree that there should be no further pleading or argument on this topic and the resolution of this issue should not delay or impede the approval process for the settlement.

DATED: January 17, 2017

THE GRAVES FIRM


By: 

ALLEN GRAVES

Attorney for Plaintiffs  
Richard Barajas, Felicia Bovenkerk, Timothy Collins,  
Becky Eads, Amanda Johnson, Suzanne Lansford,  
Kevin Robinson, Janet Tinoco and David Velasco

DATED: January 17, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

JOSHUA CARLON

Attorney for Defendants  
Marlu Restaurant Group, Inc., Marlu LC, Inc., Marlu  
Stockton LLC, Prestige Management LLC, Smart  
Management & Co., Inc., Secret River, Inc., Central  
Valley QSR, Inc., G Maroni Company, Inc., Caljax,  
Inc., C Food Concepts, Inc., Aksan United Fortune,  
Inc., Cardinal Appliance & Hardware, Inc., Maritime  
Management Company, Marlu Investment Group,  
Anton Lutfi, Stephen Lutfi, and Nader Lutfi

**PROOF OF SERVICE**

STATE OF CALIFORNIA )

) ss:

COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Ave., Main Floor, Sierra Madre, CA 91024.

On January 18, 2017, I served the following document(s) described as:

- **JOINT STATEMENT REGARDING PAYROLL ELECTION FORM**

on the interested parties by placing a true copy thereof in a sealed envelope(s) addressed as follows:

Shane Singh  
Lewis Brisbois Bisgaard & Smith LLP  
2020 W. El Camino Ave., Suite 700  
Sacramento, CA 95833

Joshua Carlon  
Lewis Brisbois Bisgaard & Smith LLP  
633 W. Fifth St., Suite 4000  
Los Angeles, CA 90071

**VIA OVERNIGHT MAIL:**

By delivering such document(s) to an overnight mail service or an authorized courier in a sealed envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.

**VIA U.S. MAIL:**

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on January 18, 2017 with postage thereon fully prepaid, at Sierra Madre, California.

**VIA PERSONAL DELIVERY:**

I delivered such documents to a professional messenger to be personally delivered by hand today to the offices of the addressee(s) pursuant to CCP §1011.

**VIA EMAIL:**

I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served before 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 18, 2017, at Sierra Madre, California.

Justine Gray

Type or Print Name

Signature

**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 ) ss:  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 122 N. Baldwin Ave., Main Floor, Sierra Madre, CA 91024.

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Joshua Carlon  
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633 W. Fifth St., Suite 4000  
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- VIA EMAIL:**  
I personally sent such document(s) via email to the known email address of the person(s) on whom it is to be served before 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 18, 2017, at Sierra Madre, California.

Kevin Karr  
Type or Print Name

  
Signature