

1 THE GRAVES FIRM
2 ALLEN GRAVES (SB#204580)
E-mail: allen@gravesfirm.com
3 JACQUELINE TREU (SB#247927)
E-mail: jacqueline@gravesfirm.com
4 122 N. Baldwin Ave., Main Floor
5 Sierra Madre, CA 91024
Telephone: (626) 240-0575
6 Facsimile: (626) 737-7013

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

JAN 18 2017

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

Sherri R. Carter, Executive Officer/Clerk

By CRYSTAL VARGAS, Deputy

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,
and David Velasco appearing on behalf of
17 themselves and all others similarly
situated

18 Plaintiffs,

v.

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

26 Defendants
27
28

CASE NO: BC630452

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: February 9, 2017

Time: 2:00 p.m.

Dept: 322

Judge: Hon. William F. Highberger

1 In support of their Motion for an Order Preliminarily Approving Class Action
2 Settlement, Plaintiffs and Class Representatives Richard Barajas, Felicia Bovenkerk,
3 Timothy Collins, Becky Eads, Amanda Johnson, Suzanne Lansford, Kevin Robinson, Joe
4 Ortiz, Janet Tinoco, and David Velasco respectfully ask this Court to take judicial notice
5 of the following exhibits and the information contained therein:

- 6 1. First Amended Class Action Complaint filed May 29, 2015 with the United
7 States District Court for the Central District of California in the case of *Ortiz*
8 *v Marlu Restaurant Group Inc. et al.*, Case No. SACV14-01790 DOC
9 (DFMx), a true and correct copy of which is attached hereto Exhibit 1.
- 10 2. Joint Stipulation to Stay Matter in Light of Settlement, filed November 8,
11 2016 with the United States District Court for the Central District of
12 California in the case of *Ortiz v Marlu Restaurant Group Inc. et al.*, Case
13 No. SACV14-01790 DOC (DFMx), a true and correct copy of which is
14 attached hereto Exhibit 2.
- 15 3. November 10, 2016 Order to Stay Matter in Light of Settlement entered by
16 the Honorable David O. Carter in the case of *Ortiz v Marlu Restaurant*
17 *Group Inc. et al.*, SACV14-01790 DOC (DFMx) in the United States
18 District Court for the Central District of California, a true and correct copy
19 of which is attached hereto as Exhibit 3.
- 20 4. November 21, 2016 Order Dismissing Case entered by the Honorable
21 David O. Carter in the case of *Ortiz v Marlu Restaurant Group Inc. et al.*,
22 SACV14-01790 DOC (DFMx) in the United States District Court for the
23 Central District of California, a true and correct copy of which is attached
24 hereto as Exhibit 4.

1 Judicial notice of Exhibits 1-4 is appropriate under California Evidence Code
2 §452(d), which permits courts to take judicial notice of “[r]ecords of . . . any court of
3 record of the United States or of any state of the United States.” As Exhibits 1-4
4 constitute records of the court of the United States, judicial notice of these Exhibits is
5 proper.

6
7 DATED: January 17, 2016

THE GRAVES FIRM

8
9 By: 

ALLEN GRAVES

10 Attorney for Plaintiffs

11 Richard Barajas, Felicia Bovenkerk, Timothy Collins,
12 Becky Eads, Amanda Johnson, Suzanne Lansford,
13 Joe Ortiz, Kevin Robinson, Janet Tinoco, and
14 David Velasco

1 THE GRAVES FIRM
 2 ALLEN GRAVES (SB#204580)
 3 allen@gravesfirm.com
 4 JACQUELINE TREU (SB#247927)
 5 jacqueline@gravesfirm.com
 6 122 N. Baldwin Ave., Main Floor
 7 Sierra Madre, CA 91024
 8 Telephone: (626) 240-0575
 9 Facsimile: (626) 737-7013
 10 Attorneys for Plaintiff
 11 Joe Ortiz

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 Joe Ortiz

CASE NO: SACV14-01790 DOC (RNBx)

15 Plaintiff,

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

16 v.

17 Marlu Restaurant Group,
 18 Inc., Marlu LC, Inc., Marlu
 19 Stockton LLC, Prestige
 20 Management LLC, Smart
 21 Management & Co., Inc.,
 22 Secret River, Inc., Central
 23 Valley QSR, Inc., G Maroni
 24 Company, Inc., Caljax, Inc.,
 25 C Food Concepts, Inc.,
 26 Aksan United Fortune, Inc.,
 27 Smart Sears, and DOES 1
 28 through 10, inclusive,

1. **Class Claim for Failure to Pay Wages as Required by 29 U.S.C. §206;**
2. **Class Claim for Failure to Pay Overtime Wages as Required by 29 U.S.C. §207;**
3. **Class Claim for Failure to Accurately Record Hours Worked in Violation of 29 U.S.C. §211;**
4. **Class and Representative Claim for Failure to Pay Wages as Required by California Labor Code §204;**
5. **Class and Representative Claim for Failure to Pay Overtime Wages in Violation of Labor Code §§510 and 1194;**
6. **Class and Representative Claim for Failure to Accurately Record Hours Worked in Violation of the Wage Order and Labor Code §1198;**
7. **Class and Representative Claim for Failure to Provide a Complete Itemized Paystub in Violation of California Labor Code §226;**
8. **Class and Representative Claim for Violation of Labor Code §§201 and 202;**
9. **Class and Representative Claim for Failure to Reimburse Employee Business Expenses in Violation of Labor Code §2802; and**
10. **Representative Claim for Violation of Business and Professions Code §17200 et seq. against all Defendants.**

Defendants.

DEMAND FOR JURY TRIAL

1 Plaintiff Joe Ortiz (“Plaintiff”) alleges as follows:
2

3 **INTRODUCTION**

4 1. Plaintiff brings this Complaint to recover wages, civil penalties and
5 other damages that are owed to him and other past and present employees as a
6 result of a series of Labor Code violations by Marlu Restaurant Group, Inc., Marlu
7 LC, Inc., Marlu Stockton LLC, Prestige Management LLC, Smart Management &
8 Co., Inc., Secret River, Inc., Central Valley QSR, Inc., G. Maroni Company, Inc.,
9 Caljax, Inc., C Food Concepts, Inc., Aksan United Fortune, Inc., and Smart Sears
10 (hereinafter collectively “Marlu” or “Defendants”).

11 2. Plaintiff brings the First through Third Causes of Action as a
12 representative action pursuant to 29 U.S.C §216.

13 3. Plaintiff brings the Fourth through Sixth, Eighth and Ninth Causes of
14 Action as both as a Private Attorney General and as a class action.

15 4. Plaintiff brings the Seventh Cause of Action in this Complaint as a
16 both as a Private Attorney General and as a class action on behalf of himself and
17 two sub-classes of current and former Marlu employees as defined below.

18 5. With regard to the violations of Business and Professions Code
19 §17200 *et seq.* alleged in the Tenth Cause of Action, Plaintiff brings a
20 representative action on behalf of all Marlu employees subject to the unfair
21 practices that are described or incorporated by reference therein.
22

23 **THE PARTIES**

24 6. All of the Defendants are entities owned and operated by Anton Lufti
25 and a small group of investors. The Defendant entities are managed and directed
26 out of a single physical office as a single enterprise. The business of that single
27 enterprise is the ownership and operation of fast food restaurants. Plaintiff refers to
28 the Defendant entities herein collectively as “Marlu” or “Marlu entities.” These

1 terms are used to include all named Defendants, not just those with the word
2 “Marlu” in their names.

3 7. All of the named Defendants are corporations or partnerships
4 organized under the laws of the State of California. All of the Defendants have
5 their primary place of business at the exact same location in Sacramento County,
6 California. All of the Defendants operate jointly in the ownership and operation of
7 each restaurant nominally owned or operated by any Defendant. Each Defendant
8 has acted deliberately to conceal from employees the name of the legal entity that is
9 the employer of the individuals who work at the restaurants owned and operated by
10 Defendants.

11 8. Ortiz is a citizen of the United States and a resident of Orange County,
12 California. From June 13, 2013, until the present, Marlu has employed Ortiz in
13 Orange County, California as a General Manager.

14 9. Plaintiff is currently unaware of the true names and capacities of the
15 Defendants sued herein as Does 1 through 10 (the “Doe Defendants”) and therefore
16 sues the Doe Defendants by such fictitious names. Plaintiff will amend this
17 Complaint to allege the true names when they are ascertained.

18 10. Plaintiff is informed and believes, and thereon alleges, that the Doe
19 Defendants are the partners, agents, or principals and co-conspirators of the named
20 Defendants, and of each other; that the named Defendants and the Doe Defendants
21 performed the acts and conduct herein alleged directly, aided and abetted the
22 performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
23 of such acts and conduct, and therefore each of the Doe Defendants is liable to
24 Ortiz to the extent of the liability of the named Defendants as alleged herein.

25 11. Plaintiff is informed and believes, and on that basis alleges, that at all
26 times herein mentioned, each of the Defendants was the agent, servant and/or
27 employee of each of the other Defendants and, in connection with the matters
28 hereinafter alleged, was acting within the scope of such agency and employment,

1 and each Defendant ratified each and every act, omission and thing done by each
2 and every other Defendant herein.

3
4 **JURISDICTION AND VENUE**

5 12. This Court has jurisdiction over this matter because this Complaint
6 alleges a federal question in that violations of 29 U.S.C. §201 *et seq.* are alleged.

7 13. This Court has supplemental jurisdiction over all state law claims
8 under 28 U.S.C §1367(a). The state law claims turn on the same failure to track
9 work hours, pay wages and pay overtime premiums that underlie Plaintiff's FLSA
10 claims. The Defendants' failure to provide the required information on employee
11 pay stubs was an integral part of Defendants' plan to steal wages and overtime
12 premiums from its employees.

13 14. Venue is proper pursuant to 28 U.S.C. §1391 because the Defendants
14 employed Plaintiff in Orange County, California and liability against Defendants
15 therefore arises in that county.

16
17 **LABOR CODE §2699**

18 15. Plaintiff realleges and incorporates herein by this reference the
19 allegations of Paragraphs 1 through 14 hereof, inclusive.

20 16. California Labor Code §2699 *et seq.* authorizes Plaintiff to recover
21 civil penalties on behalf of himself, the State of California, and all other Marlu
22 employees who have been employed in California for each Labor Code violation
23 described herein.

24 17. Plaintiff hereby seeks to recover civil penalties for each Labor Code
25 violation described herein on behalf of himself, the State of California, and all other
26 Marlu General Managers and hourly employees who have been employed in
27 California pursuant to California Labor Code §2699 *et seq.*

28

1 18. Pursuant to California Labor Code §2699.3, on June 25, 2014, Plaintiff
2 gave written notice by certified mail to the Labor and Workforce Development
3 Agency (“LWDA”) and the employer of the specific provisions of the Labor Code
4 alleged to be violated in this Complaint, including the facts and theories to support
5 the alleged violation.

6 19. More than 33 days have passed since Plaintiff gave written notice by
7 certified mail to the LWDA and the employer. On August 4, 2014, the LWDA
8 responded with notice that it will not investigate the claims in this matter.

9
10 **COMMON ALLEGATIONS**

11 20. Plaintiff realleges and incorporates herein by this reference the
12 allegations of Paragraphs 1 through 19 hereof, inclusive.

13 21. Marlu owns and operates fast food restaurants in California.

14 22. Marlu employs a General Manager at each of its California restaurants.

15 23. Marlu requires all General Managers to work more than 40 hours per
16 workweek inside a restaurant.

17 24. At all times relevant hereto, Marlu has required all of its General
18 Managers to be available by phone to both their subordinates and superiors 24
19 hours per day and 7 days per week. This on-call availability is in addition to the
20 hours that each General Manager is required to work in the restaurant.

21 25. Since at least November of 2010, Marlu has refused to pay General
22 Managers in California for the time that General Managers spend actively working
23 outside of the restaurant as a result of the on-call requirement (“on-call” work).

24 26. During all times relevant hereto, Marlu has refused to record or track
25 the time or duration of on-call work performed by General Managers in California.

26 27. During all times relevant hereto, Marlu has refused to compensate
27 General Managers for on-call work.

28

1 43. At all times relevant hereto, Marlu has violated 29 U.S.C. §211 by
2 failing to record the on-call hours worked by General Managers.

3 44. At all times relevant hereto, Marlu has acted willfully and deliberately
4 with oppression, fraud and malice to avoid keeping records of on-call hours worked
5 in order to deprive its employees of the wages and overtime premiums to which
6 they are entitled.

7

8

FOURTH CAUSE OF ACTION

9

(Failure to Pay Wages as Required by California Labor Code §204)

10 45. Plaintiff realleges and incorporates herein by this reference the
11 allegations of Paragraphs 1 through 44 hereof, inclusive.

12 46. Labor Code §204 requires that all wages are due and payable twice in
13 each calendar month.

14 47. At all times relevant hereto, Marlu has used a two-week pay period for
15 compensation of General Managers in California.

16 48. At all times relevant hereto, Marlu General Managers in California
17 have regularly performed more than one hour of on-call work in a week.

18 49. At all times relevant hereto, Marlu General Managers in California
19 have regularly performed more than two hours of on-call work in a pay period.

20 50. At all times relevant hereto, Marlu has refused to pay General
21 Managers in California for on-call work.

22 51. Marlu is guilty of the tort of conversion with regard to each wage
23 payment that the Company has withheld from a General Manager.

24 52. At all times relevant hereto, Marlu has acted willfully and deliberately
25 with oppression, fraud and malice to deprive employees of wages to which they are
26 entitled.

27

28

FIFTH CAUSE OF ACTION

**(Failure to Pay Overtime Wages in Violation of
California Labor Code §§510 and 1194)**

1
2
3
4 53. Plaintiff realleges and incorporates herein by this reference the
5 allegations of Paragraphs 1 through 52 hereof, inclusive.

6 54. At all times relevant hereto, California Labor Code §510 has required
7 that Marlu pay each of its General Managers 1 ½ times his or her regular rate of pay
8 for any work in excess of 8 hours in one workday, in excess of 40 hours in one
9 workweek, and for the first 8 hours of work on the seventh day of a workweek.

10 55. At all times relevant hereto, California Labor Code §510 requires that
11 Marlu pay each of its General Managers two times his or her regular rate of pay for
12 any work in excess of 12 hours in one workday on the first six days of the
13 workweek, and in excess of 8 hours on the seventh day of a workweek.

14 56. Because Marlu requires General Managers in California to work more
15 than 40 hours per week in a restaurant and on-call time is in addition to work in the
16 restaurant, all unpaid on-call hours are subject to an overtime premium of either
17 time-and-a-half or double-time.

18 57. At all times relevant hereto, Marlu has refused to pay the overtime
19 premium due on unpaid on-call work hours.

20 58. Because Marlu refused to pay any overtime premium due on unpaid
21 on-call work hours, the company owes each General Manager either the time-and-
22 a-half premium or the double-time premium for every hour of unpaid on-call work.

23 59. At all times relevant hereto, General Managers in California have
24 regularly worked on-call work hours on days in which the General Manager worked
25 more than twelve hours.
26
27
28

SEVENTH CAUSE OF ACTION

**(Failure to Provide an Accurate Itemized Paystub
in Violation of California Labor Code §226)**

68. Plaintiff realleges and incorporates herein by this reference the allegations of Paragraphs 1 through 67 hereof, inclusive.

69. California Labor Code §226(a) requires that each pay period Marlu must provide each employee with an itemized statement of wages that includes, among other things, the name and address of the legal entity that is the employer, the inclusive dates of the period for which the employee is paid, all hourly rates applicable to work performed in that pay period, the hours worked by the employee, the gross wages earned by the employee and the net wages earned by the employee.

70. Until mid-January 2015, Marlu failed to provide any of its California employees with an itemized statement of wages that showed the name and address of the legal entity that is the employer. In fact, Defendants' paystubs listed no employer at all. This violation of Labor Code §226(a) affected all hourly employees in California and constitutes a violation independent from any failure to pay wages for overtime premium described herein.

71. Until mid-January 2015, Marlu failed to provide any of its California employees with an itemized statement of wages that showed the inclusive dates of the period for which the employee was paid. In fact, Defendants' paystubs listed only the end date of the pay period. This violation of Labor Code §226(a) affected all hourly employees in California and constitutes a violation independent from any failure to pay wages for overtime premium described herein.

72. Until mid-January 2015, Marlu failed to provide any of its California employees with an itemized statement of wages that showed the applicable hourly rates in effect during the pay period. In fact, Defendants' paystubs listed no hourly rate information. This violation of Labor Code §226(a) affected all hourly

1 employees in California and constitutes a violation independent from any failure to pay
2 wages for overtime premium described herein.

3 73. At all times relevant hereto, Marlu has failed to provide any of its
4 California General Managers with an itemized statement of wages that accurately
5 states the total hours worked by the General Manager in that each statement omits
6 on-call hours worked.

7 74. At all times relevant hereto, Marlu has failed to provide any of its
8 General Managers with an itemized statement that accurately states the net wages
9 earned by the General Manager in that each statement omitted wages due for on-
10 call hours worked.

11 75. At all times relevant hereto, Marlu has failed to provide any of its
12 General Managers with an itemized statement that accurately states the gross wages
13 in that each statement omitted wages due for on-call hours worked.

14 76. At all times relevant hereto, Marlu has failed to provide any of its
15 General Managers with an itemized statement that accurately states the net wages
16 earned by the General Manager in that each statement omitted overtime premiums
17 due for on-call hours worked.

18 77. At all times relevant hereto, Marlu has failed to provide any of its
19 General Managers with an itemized statement that accurately states the gross wages
20 earned by the General Manager in that each statement omitted overtime premiums
21 due for on-call hours worked.

22 78. All of the violations described in this Seventh Cause of Action were
23 knowing and intentional on the part of Marlu, and none of these violations were
24 committed inadvertently or through clerical error.

25
26
27
28

1 **EIGHTH CAUSE OF ACTION**

2 **(Violation of California Labor Code §§201 and 202)**

3 79. Plaintiff realleges and incorporates herein by this reference the
4 allegations of Paragraphs 1 through 78 hereof, inclusive.

5 80. Labor Code §§201 and 202 require that Defendant pay each employee
6 all of the wages earned by that employee at the time of termination for an
7 involuntary termination and within 72 hours of termination for a voluntary
8 termination.

9 81. At all times relevant hereto, Marlu has willfully failed to pay the
10 wages due for on-call work due to each General Manager who was terminated or
11 quit his or her job at Marlu.

12 82. At all times relevant hereto, Marlu has willfully failed to pay the
13 overtime premium due for on-call work due to each General Manager who was
14 terminated or quit his or her job at Marlu.

15
16 **NINTH CAUSE OF ACTION**

17 **(Failure to Reimburse Employee Expenses in Violation of Labor Code §2802)**

18 83. Plaintiff realleges and incorporates herein by this reference the
19 allegations of Paragraphs 1 through 82 hereof, inclusive.

20 84. At all times relevant hereto, Labor Code §2802 has required Defendant
21 to reimburse all employees for necessary expenditures incurred by the employee in
22 direct consequence of the discharge of his or her duties or of his or her obedience to
23 the directions of the employer.

24 85. At all times relevant hereto, Marlu required every General Manager to
25 own and maintain a cell phone in order to be available to take work-related calls 24
26 hours per day and 7 days per week.

CLASS ACTION ALLEGATIONS

1
2 93. Plaintiff realleges and incorporates herein by this reference the
3 allegations of Paragraphs 1 through 92 hereof, inclusive.

4 94. For purposes of defining the proposed class, the term “Liability
5 Period” shall, with regard to FLSA claims, mean the period beginning exactly three
6 years prior to the filing of the initial Complaint in this action and continuing to the
7 date a final judgment is entered in this matter.

8 95. For purposes of defining the proposed class, the term “Liability
9 Period” shall, with regard to state law claims, mean the period beginning exactly
10 four years and 33 days prior to the filing of the initial Complaint in this action and
11 continuing to the date a final judgment is entered in this matter.

12 96. Plaintiff seeks to certify the following subclasses pursuant to FRCP
13 §23(b)(3):

14 **Hourly Employee Subclass.** This subclass shall be defined as all
15 individuals whom any Defendant employed in California as an hourly employee
16 during the Liability Period. This subclass is limited to the following violations of
17 Labor Code §226(a) described in the Seventh Cause of Action: failure to list the
18 name and address of the legal entity that is the employer; failure to list the inclusive
19 dates of the pay period for which the employee is paid; and failure to list the
20 applicable hourly rates in effect during the pay period.

21 **General Manager Subclass.** This subclass shall be defined as all
22 individuals whom any Defendant employed in California as a General Manager
23 during the Liability Period. This subclass is limited to the First through Ninth
24 Causes of Action and excludes the three violations of Labor Code §226(a)
25 described in the Seventh Cause of Action that are the subject of the hourly
26 employee subclass.

27 97. Marlu employs over 100 hourly employees in California.

28 98. Marlu employs over 20 General Managers in California.

1 99. Plaintiff is informed and believes, and thereon alleges, that all Marlu
2 hourly employees, including, but not limited to General Managers have been
3 subject to Marlu's violations of the California Labor Code, the California Wage
4 Orders, and the FLSA described herein.

5 100. Plaintiff is informed and believes, and thereon alleges, that Plaintiff
6 has been subject to the exact same violations of the California Labor Code, the
7 California Wage Orders, and the FLSA described herein as all other hourly
8 employees, including, but not limited to General Managers.

9 101. A Class Action is superior to all other available means of resolving the
10 Class Members' claims because a Class Action will: 1) provide relief to
11 individuals whose claims are too small to support individual litigation; 2) provide
12 relief to employees who are deterred from bringing an individual claim by fear of
13 retaliation; 3) provide individual employees access to expert counsel who would
14 not litigate these claims on an individual basis; and 4) serve judicial economy by
15 resolving related claims in a single proceeding.

16 102. Even if the amount of stolen wages could support individual litigation,
17 because this case turns on common questions that are answered with common
18 evidence, a single action is more effective for both the Court and the litigants than
19 multiple individual actions.

20 103. Treatment of the instant claims as a Class Action will accrue
21 substantial benefits to the litigants, the class, the public, and the courts in that it
22 represents the most efficient means of resolving the dispute and, for many
23 employees, the only possible means to recover the stolen wages and hold Marlu
24 responsible for its wage theft. The benefit to the public is especially acute because
25 California has a strong public policy forbidding wage theft and supporting
26 enforcement of the laws that forbid wage theft.

27 104. The resolution of the claims in this case will turn on common
28 questions including but not limited to: 1) whether Defendants maintained a

1 uniform policy of refusing to track and record on-call work; 2) whether Defendants
2 maintained a uniform policy of refusing to pay General Managers for on-call work;
3 3) whether Defendants maintained a uniform policy of refusing to pay overtime
4 premium for on-call work; 4) whether Defendants maintained a uniform policy of
5 refusing to reimburse General Manager employees for expenses related cellular
6 telephones that these employees were required to use for work and keep with them
7 at all times; and 5) whether Defendants maintained a uniform policy of omitting
8 required information from employee pay stubs.

9 105. The uniform questions presented in this case will be answered by
10 common evidence that provides a uniform answer the question of liability. For
11 example, Defendants' own time records will show on a uniform class wide basis
12 whether the company tracked on-call work. Defendants' own payroll records will
13 show on a uniform class wide basis whether the company paid wages or overtime
14 premiums for on-call work. Defendants' own payroll records will also show
15 whether the company reimbursed expenses related to sailor telephones that
16 employees were required to use for work and keep with them at all times.
17 Defendants' own records will also show that the company used a single identical
18 paystub form for all employees.

19 106. Plaintiff has agreed to fairly and adequately represent the rights of the
20 class.

21 107. Plaintiff has the means to fairly and adequately represent the rights of
22 the class.

23
24 **COLLECTIVE ACTION ALLEGATIONS**

25 108. Plaintiff realleges and incorporates herein by this reference the
26 allegations of Paragraphs 1 through 107 hereof, inclusive.

27 109. Plaintiff brings the First through Third Causes of Action for violation
28 of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29

1 U.S.C. §216(b), on behalf of all individuals whom Marlu employed in California as
2 a General Manager during the Liability Period.

3 110. The First through Third Causes of Action for violations of the FLSA
4 are being brought and maintained as an “opt-in” collective action pursuant to 29
5 U.S.C. §216(b) for all violations of the FLSA.

6 111. A collective action is a superior method for bringing this action in that
7 there is a well-defined community of interest in the questions of law and fact.
8 Questions of law and fact common to the collective action include, but are not
9 limited to: 1) whether Defendants maintained a uniform policy of refusing to track
10 and record on-call work; 2) whether Defendants maintained a uniform policy of
11 refusing to pay General Managers for on-call work; and 3) whether Defendants
12 maintained a uniform policy of refusing to pay overtime premium for on-call work.

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Defendants and Does 1
16 through 10, inclusive, and each of them, as follows:

17
18 **ON THE FIRST CAUSE OF ACTION:**

- 19 1. For damages according to proof;
20 2. For lost wages;
21 3. For liquidated damages pursuant to 29 U.S.C. §216(b);
22 4. For temporary, preliminary and permanent injunctive relief against Defendants’
23 ongoing violations of the Fair Labor Standards Act; and
24 5. For reasonable attorney fees and costs.

25
26
27
28

1 **ON THE SECOND CAUSE OF ACTION:**

- 2 1. For damages according to proof;
3 2. For lost wages;
4 3. For liquidated damages pursuant to 29 U.S.C. §216(b);
5 4. For temporary, preliminary and permanent injunctive relief against Defendants'
6 ongoing violations of the Fair Labor Standards Act; and
7 5. For reasonable attorney fees and costs.

8
9 **ON THE THIRD CAUSE OF ACTION:**

- 10 1. For damages according to proof;
11 2. For lost wages;
12 3. For temporary, preliminary and permanent injunctive relief against Defendants'
13 ongoing violations of the Fair Labor Standards Act; and
14 4. For reasonable attorney fees and costs.

15
16 **ON THE FOURTH CAUSE OF ACTION:**

- 17 1. For damages according to proof;
18 2. For restitution of unpaid wages;
19 3. For temporary, preliminary and permanent injunctive relief against Defendants'
20 ongoing violations of the Labor Code;
21 4. For civil penalties on behalf of current and former hourly employees pursuant to
22 Labor Code §210;
23 5. For attorney fees and costs reasonably incurred, in accordance with
24 California Labor Code §§218.5, 2699, 1194, and California Code of Civil
25 Procedure §1021.5;
26 6. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287;
27 and
28 7. For punitive damages.

1 **ON THE FIFTH CAUSE OF ACTION:**

- 2 1. For damages according to proof;
- 3 2. For restitution of unpaid wages;
- 4 3. For disgorgement of Defendants' ill-gotten gains;
- 5 4. For civil penalties pursuant to Labor Code §§558 and 2699;
- 6 5. For attorney fees and costs reasonably incurred, in accordance with
- 7 California Labor Code §§218.5, 2699, 1194, and California Code of Civil
- 8 Procedure §1021.5;
- 9 6. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287;
- 10 and
- 11 7. For punitive damages.

12

13 **ON THE SIXTH CAUSE OF ACTION:**

- 14 1. For temporary, preliminary and permanent injunctive relief against Defendants'
- 15 ongoing violations of the Labor Code;
- 16 2. For civil penalties pursuant to Labor Code §2699; and
- 17 3. For attorney fees and costs reasonably incurred, in accordance with
- 18 California Labor Code §§218.5, 2699, 1194, and California Code of Civil
- 19 Procedure §1021.5.

20

21 **ON THE SEVENTH CAUSE OF ACTION:**

- 22 1. For temporary, preliminary and permanent injunctive relief against Defendants'
- 23 ongoing violations of the Labor Code;
- 24 2. For penalties pursuant to Labor Code §226(e);
- 25 3. For penalties pursuant to Labor Code §226.3;
- 26 4. For civil penalties pursuant to Labor Code §2699;

27

28

- 1 5. For attorney fees and costs reasonably incurred, in accordance with
- 2 California Labor Code §§218.5, 2699, 1194, and California Code of Civil
- 3 Procedure §1021.5; and
- 4 6. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287.

5

6 **ON THE EIGHTH CAUSE OF ACTION:**

- 7 1. For temporary, preliminary and permanent injunctive relief against Defendants’
- 8 ongoing violations of the Labor Code;
- 9 2. For waiting time penalties pursuant to Labor Code §203; and
- 10 3. For attorney fees and costs reasonably incurred, in accordance with
- 11 California Labor Code §§218.5, 2699, 1194, and California Code of Civil
- 12 Procedure §1021.5.

13

14 **ON THE NINTH CAUSE OF ACTION:**

- 15 1. For damages according to proof;
- 16 2. For restitution of unpaid employee business expenses;
- 17 3. For temporary, preliminary and permanent injunctive relief against Defendants’
- 18 ongoing violations of the Labor Code;
- 19 4. For civil penalties pursuant to Labor Code §2699 and all other applicable
- 20 penalties;
- 21 5. For attorney fees and costs reasonably incurred, in accordance with
- 22 California Labor Code §§218.5, 2802, 2699, 1194, and California Code of Civil
- 23 Procedure §1021.5; and
- 24 6. For interest pursuant to Labor Code §§2802, 218.6 and 1194, and
- 25 Civil Code §3287.

26

27

28

1 **ON THE TENTH CAUSE OF ACTION:**

- 2 1. For temporary, preliminary and permanent injunctive relief against Defendants’
- 3 ongoing violations of the Labor Code;
- 4 2. For disgorgement of Defendants’ ill-gotten gains and other relief that may be
- 5 necessary to remedy Defendants’ misconduct;
- 6 3. For restitution of payments unlawfully withheld;
- 7 4. For attorney fees and costs reasonably incurred pursuant to California Code of
- 8 Civil Procedure §1021.5; and
- 9 5. For interest pursuant to Civil Code §3287.

10
11 **ON ALL CAUSES OF ACTION:**

- 12 1. For costs of suit, to the extent not otherwise prayed for above;
- 13 2. For attorney fees to the extent not otherwise prayed for above;
- 14 3. For interest on damages recoverable; and
- 15 4. For such other and further relief as the Court deems just and proper.

16
17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial.

19
20 DATED: May 29, 2015

THE GRAVES FIRM

21 By: /s/ Allen Graves

22 ALLEN GRAVES

23 Attorney for Plaintiff

24 Joe Ortiz

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
2 JOSHUA D. CARLON, SB# 263838
3 E-Mail: Joshua.Carlon@lewisbrisbois.com
4 633 West 5th Street, Suite 4000
5 Los Angeles, California 90071
6 Telephone: 213.250.1800
7 Facsimile: 213.250.7900

8 Attorneys for Defendants

9 **THE GRAVES FIRM**
10 ALLEN GRAVES (SB#204580)
11 allen@gravesfirm.com
12 JACQUELINE TREU (SB#247927)
13 jacqueline@gravesfirm.com
14 122 N. Baldwin Ave., Main Floor
15 Sierra Madre, CA 91024
16 Telephone: (626) 240-0575
17 Facsimile: (626) 737-7013

18 Attorneys for Plaintiff
19 Joe Ortiz

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 Joe Ortiz,

23 Plaintiff,

24 v.

25 Marlu Restaurant Group, Inc.,
26 Marlu LC, INC., Marlu Stockton
27 LLC, Prestige Management LLC,
28 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.,
Smart Sears, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: SACV14-01790 DOC (DFMx)

**JOINT STIPULATION TO STAY
MATTER IN LIGHT OF
SETTLEMENT**

Courtroom: 9D
Judge: Hon. David O. Carter

1 Plaintiff Joe Ortiz (“Plaintiff”) and Defendants Marlu Restaurant Group, Inc.,
2 Marlu Stockton LLC, Prestige Management LLC, Smart Management & Co., Inc.,
3 Marlu LC, Inc., Secret River, Inc., Central Valley QSR, Inc., G Maroni Company,
4 Inc., Caljax, Inc., C Food Concepts, Inc., Aksan United Fortune, Inc. and Cardinal
5 Appliance and Hardware Inc. (erroneously captioned as “Smart Sears”)
6 (“Defendants”), acting through their respective counsel of record, hereby jointly
7 stipulate and request that the Court order as follows¹:

8
9 On September 6, 2016, the Parties participated in a second mediation in this
10 matter with mediator Mark Rudy. The mediation ended with a mediator’s proposal
11 by Mr. Rudy. Under the proposal, Defendants will pay a Total Settlement Amount
12 of \$2.5 million dollars to resolve all claims that could be pled based on the facts
13 alleged in this case as well as the facts alleged in a second lawsuit against the same
14 Defendants that is currently pending in Los Angeles Superior Court:
15 *Barajas et al. v. Marlu Restaurant Group, Inc., et al.* BC 630452. Counsel in the
16 state court *Barajas* matter is the same counsel for Plaintiff here.

17 On September 9, 2016, all Parties in both the *Barajas* and *Ortiz* cases
18 conditionally agreed to the proposed settlement.

19 By September 16, 2016, the Parties had resolved the conditions and reached
20 an agreement for settlement.

21 On September 14, 2016, this Court, acting upon stipulation of the Parties,
22 entered an order that extended certain deadlines pending execution of formal
23 documentation of the Settlement. That order requires the Parties to execute a

24
25 ¹ Defendants’ counsel apologizes to the Court and to Plaintiff for the failure to finalize
26 this joint report by the due date per the Parties’ prior stipulation and the Court’s prior
27 Order of November 7, 2016. On the evening of November 7, 2016, Defendants’ counsel
28 Joshua Carlon believed he was still waiting for Plaintiff to circulate a finalized version of
the report when he discovered that his email software’s spam filter had filtered out a total
of nine emails from Plaintiff’s counsel over the prior three days. Before this, none of
Plaintiff’s counsel’s prior emails had been filtered out.

1 formal settlement agreement and file a statement advising the Court of the Parties’
2 plan to coordinate the settlement process by November 7, 2016.

3 On October 27, 2016, Judge William Highberger, presiding over the *Barajas*
4 matter, held an informal conference with the Parties to discuss the approval process
5 for the settlement. Based on the conference with the *Barajas* court, the Parties
6 agreed, subject to the approval of this Court, to proceed as follows:

- 7 1. Plaintiff will file a Second Amended Complaint in the *Barajas* matter
8 to add all the claims currently pled in the *Ortiz* matter. This will
9 ensure that all claims pending in the *Barajas* and *Ortiz* matters will be
10 properly pending before the *Barajas* court. A copy of the Second
11 Amended Complaint to which the Parties have agreed is attached
12 hereto as Exhibit 1.
- 13 2. The Parties will jointly request that this Court stay proceedings in this
14 case pending approval of the settlement in the *Barajas* matter.
- 15 3. Plaintiff will seek preliminary and ultimately final approval of the
16 settlement in the *Barajas* court.
- 17 4. Once the *Barajas* court grants final approval and all required payments
18 are made, Plaintiff will ask this Court to dismiss the instant case
19 without prejudice. At no point will this Court be asked to enter any
20 order effecting a release of any claims.

21
22 As of November 7, 2016, the Parties have exchanged multiple drafts of a
23 Stipulation and Settlement of Class Action Claims (“Agreement”). The Parties are
24 in the process of finalizing the terms and obtaining all required signatures for the
25 Agreement. The Parties expect to have the Agreement fully executed within seven
26 days.

1 In light of the foregoing, and in order to facilitate the settlement process, the
2 Parties here jointly request that this this Court order the Parties to file the executed
3 Settlement Agreement within seven days. The Parties further request that upon
4 filing of the Settlement Agreement, the matter be stayed until resolution of the state
5 court approval process in the *Barajas* matter.

6 The Parties anticipate that total resolution of the *Barajas* matter will take
7 approximately six to eight calendar months, and therefore further request that this
8 Court set a status conference for a date convenient to the Court for the week of
9 July 10, 2017.

10 All signatories listed below, and on whose behalf this filing is submitted,
11 concur in the filing's content and have authorized the filing.

12
13 DATED: November 8, 2016 THE GRAVES FIRM

14
15 By: /s/Allen Graves

16 ALLEN GRAVES

17 Attorney for Plaintiff
18 Joe Ortiz

19 DATED: November 8, 2016 LEWIS BRISBOIS BISGAARD & SMITH LLP

20
21 By: /s/ Joshua Carlon

22 JOSHUA CARLON

23 Attorney for Defendants
24 Marlu Restaurant Group, Inc., Marlu LC, Inc.,
25 Marlu Stockton LLC, Prestige Management,
26 Smart Management & Co., Inc., Secret River, Inc.,
27 Central Valley QSR, Inc., G Maroni Company,
28 Inc., Caljax, Inc., C Food Concepts, Inc., Aksan
United Fortune, Inc. and Smart Sears

1 THE GRAVES FIRM
2 ALLEN GRAVES (SB#204580)
3 E-mail: allen@gravesfirm.com
4 JACQUELINE TREU (SB#247927)
5 E-mail: jacqueline@gravesfirm.com
6 122 N. Baldwin Ave., Main Floor
7 Sierra Madre, CA 91024
8 Telephone: (626) 240-0575
9 Facsimile: (626) 737-7013

10 Attorney for Plaintiffs
11 Richard Barajas, Felicia Bovenkerk,
12 Timothy Collins, Becky Eads,
13 Amanda Johnson, Suzanne Lansford,
14 Kevin Robinson, Janet Tinoco,
15 and David Velasco

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF LOS ANGELES

18 Richard Barajas, Felicia
19 Bovenkerk, Timothy Collins,
20 Becky Eads, Amanda Johnson,
21 Suzanne Lansford, Kevin
22 Robinson, Joe Ortiz, Janet Tinoco,
23 and David Velasco appearing on
24 behalf of themselves and all others
25 similarly situated

26 Plaintiffs,

27 v.

28 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., Marlu PS,
LLC, Maritime Management
Company, Marlu Investment
Group, Anton Lutfi, Stephen
Lutfi, Nader Lutfi and DOES 1
through 10, inclusive,

Defendants.

CASE NO.: BC630452

**SECOND AMENDED CLASS ACTION AND
PAGA COMPLAINT**

1. **Private Attorney General and Class Claim for Failure to Provide Meal Breaks in Violation of Labor Code §§512, 1198, and the Operative Wage Order;**
2. **Private Attorney General and Class Claim for Failure to Pay Wages as Required by California Labor Code §204;**
3. **Private Attorney General and Class Claim for Failure to Pay Wages Upon Termination as Required by Labor Code §§201 and 202;**
4. **Private Attorney General and Class Claim for Mandatory Enforcement of a Payroll Card Program in Violation of Labor Code §213(d);**
5. **Private Attorney General and Class Action Claim for Failure to Pay Wages as Required by California Labor Code §226.7;**
6. **Private Attorney General and Class Claim for Failure to Provide Suitable Seats in Violation of California Wage Order and Labor Code §1198;**
7. **Private Attorney General and Class Claim for Failure to Provide a Complete Paystub in Violation of California Labor Code §226;**
8. **Class Claim for Failure to Pay Wages as Required by 29 U.S.C. §206;**

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

- 9. **Class Claim for Failure to Pay Overtime Wages as Required by 29 U.S.C. §207;**
 - 10. **Class Claim for Failure to Accurately Record Hours Worked in Violation of 29 U.S.C. §211;**
 - 11. **Private Attorney General and Class Claim for Failure to Pay Overtime Wages in Violation of Labor Code §§510 and 1194;**
 - 12. **Private Attorney General and Class Claim for Failure to Accurately Record Hours Worked in Violation of the Wage Order and Labor Code §1198;**
 - 13. **Private Attorney General and Class Claim for Failure to Reimburse Employee Business Expenses in Violation of Labor Code §2802; and**
 - 14. **Class Claim for Violation of Business and Professions Code §17200 *et seq.***
- DEMAND FOR JURY TRIAL**

1 Plaintiffs allege as follows:

2 1. Plaintiffs bring this Complaint to recover wages, civil penalties and other
3 damages owed to them and other past and present employees as a result of a series of
4 Labor Code violations committed by Defendants Marlu Restaurant Group, Inc., Marlu
5 LC, Inc., Marlu Stockton LLC, Prestige Management LLC, Smart Management & Co.,
6 Inc., Secret River, Inc., Central Valley QSR, Inc., G. Maroni Company, Inc., Caljax, Inc.,
7 C Food Concepts, Inc., Aksan United Fortune, Inc., Cardinal Appliance & Hardware, Inc.,
8 Marlu PS, LLC, Maritime Management Company, Marlu Investment Group, Anton Lutfi,
9 Stephen Lutfi and Nader Lutfi (hereinafter collectively “Marlu” or “Defendants”).

10 2. In this Complaint, Plaintiffs use the term “Hourly Employee” to refer to all
11 individuals whom Marlu employed on an hourly basis at any California location.

12 3. In this Complaint, Plaintiffs use the term “Manager on Duty” or “MOD” to
13 refer to an employee who works as the highest-ranking employee or employee in charge
14 in a physical location on a given shift.

15 4. In this Complaint, Plaintiffs use the term “Manager Employee” to refer to
16 all individuals whom Marlu employed on an hourly basis at any California locations,
17 whom Marlu either required or permitted to work at least one shift as the MOD. These
18 employees include those with the job titles “General Manager” and “Shift Lead.”

19 5. In this Complaint, Plaintiffs use the term “Graveyard Employee” to refer to
20 all individuals whom Marlu employed on an hourly basis at any California locations that
21 operated 24 hours per day on the overnight or “graveyard” shift.

22 6. Plaintiffs bring the First through Seventh and Eleventh through Thirteenth
23 Causes of Action in this Complaint as a Private Attorney General to recover civil penalties
24 that are owed to the State of California and past and present Manager Employees as a
25 result of Defendants’ violations of the California Labor Code (“Labor Code”).
26
27
28

1 14. Defendant Stephen Lutfi, an individual, is and at all times relevant hereto
2 was a resident of the State of California, Sacramento County.

3 15. Defendant Nader Lutfi, an individual, is and at all times relevant hereto was
4 a resident of the State of California, Sacramento County.

5 16. Except where otherwise specified, Plaintiffs refer to all of the named
6 Defendants herein collectively as “Marlu.” These terms are used to include all named
7 Defendants, not just those with the word “Marlu” in their names.

8 17. All of the entity Defendants are corporations, partnerships or limited
9 liability companies organized under the laws of the State of California. All of the
10 Defendants, with the sole exception of Aksan United Fortune, Inc., have their primary
11 place of business at the exact same location in Sacramento County, California. All of the
12 Defendants operate jointly in the ownership and operation of each establishment
13 nominally owned or operated by any Defendant. Each Defendant has acted deliberately to
14 conceal from employees the name of the legal entity that is the employer of the
15 individuals who work at the restaurants owned and operated by Defendants.

16 18. Plaintiff Richard Barajas is a citizen of the United States and a resident of
17 Los Angeles County, California. From April 2013 until February 2014, Marlu employed
18 Richard Barajas in Los Angeles County, California at a Sears Home Appliance Showroom
19 franchise. While employed by Marlu, Plaintiff Richard Barajas worked as a Store
20 Manager.

21 19. Plaintiff Felicia Bovenkerk is a citizen of the United States and a resident of
22 Stanislaus County, California. From 2010 until 2013, Marlu employed Felicia Bovenkerk
23 in Stanislaus County, California at a Jack in the Box franchise. While employed by
24 Marlu, Plaintiff Felicia Bovenkerk worked as a General Manager.

25 20. Plaintiff Timothy Collins is a citizen of the United States and a resident of
26 Santa Clara County, California. From October 2014 until April 2015, Marlu employed
27 Timothy Collins in Alameda County, California at a Sizzler franchise. While employed
28 by Marlu, Plaintiff Timothy Collins worked as an Assistant Store Manager.

1 21. Plaintiff Becky Eads is a citizen of the United States and a resident of Butte
2 County, California. From August 2011 to the present, Marlu has employed Becky Eads in
3 Butte County, California at a Jack in the Box franchise. Plaintiff Becky Eads is employed
4 as a General Manager.

5 22. Plaintiff Amanda Johnson is a citizen of the United States and a resident of
6 El Dorado County, California. In 2015, Marlu employed Amanda Johnson in El Dorado
7 County, California at a Little Caesar's franchise. While employed by Marlu, Plaintiff
8 Amanda Johnson worked as a General Manager.

9 23. Plaintiff Suzanne Lansford is a citizen of the United States and a resident of
10 Sacramento County, California. From January 2013 until January 2015, Marlu employed
11 Suzanne Lansford in Sacramento County, California at a Church's Chicken franchise.
12 While employed by Marlu, Plaintiff Suzanne Lansford worked as a General Manager.

13 24. Plaintiff Kevin Robinson is a citizen of the United States and a resident of
14 Sacramento County, California. From 2009 to the present, Marlu has employed Kevin
15 Robinson in Sacramento County, California at a Church's Chicken franchise. Plaintiff
16 Kevin Robinson works as a Shift Leader.

17 25. Plaintiff Joe Ortiz is a citizen of the United States and a resident of Orange
18 County, California. From June 13, 2013, until 2015, Marlu has employed Ortiz in Orange
19 County, California as a General Manager.

20 26. Plaintiff Janet Tinoco is a citizen of the United States and a resident of
21 Sonoma County, California. From 2010 to 2014, Marlu employed Janet Tinoco in
22 Sonoma County, California at a Taco Bell franchise. While employed by Marlu, Plaintiff
23 Janet Tinoco worked as a Shift Leader.

24 27. Plaintiff David Velasco is a citizen of the United States and a resident of
25 Orange County, California. From 2013 to 2014, Marlu employed David Velasco in
26 Orange County, California at an Arby's franchise. While employed by Marlu, Plaintiff
27 David Velasco worked as a Crew Member.

28

1 43. During all times relevant hereto, Marlu has refused to compensate General
2 Managers for on-call work.

3 44. During all times relevant hereto, Marlu has refused to compensate General
4 Managers for costs associated with the cellular telephones that they are required to use for
5 work and have on hand at all times.

6 45. In an effort to avoid liability for its actions Marlu conducts its business
7 through a series of entities (“Marlu entities”). The entities are structured and operated to
8 confuse regulators and employees as to what company is responsible for the operation and
9 management of Marlu restaurants.

10 46. For example, during all times relevant hereto, Marlu has failed to list the
11 name and address of each employee’s employer on the paystub provided to that employee.
12 This issue affects all Marlu employees.

13 47. The refusal to list any employer on pay stubs is part of a larger effort to
14 confuse employees and regulators. Marlu furthers this effort by putting different entity
15 names on different documents given to employees. For example, some documents given
16 to employees refer to “Marlu Restaurant Group.” Other documents, including disciplinary
17 write-ups purport to come from “Smart Management Inc.” Still other documents,
18 including the paychecks themselves, list “Prestige Management.” At all times relevant
19 hereto Defendants have taken these actions deliberately in order to conceal and further the
20 other unlawful activity described herein.

21
22 **FIRST CAUSE OF ACTION**

23 **(Private Attorney General Claim for Failure to Provide Meal Breaks in Violation of**
24 **Labor Code §§512, 1198 and the Operative Wage Order)**

25 48. Plaintiffs re-allege and incorporate herein by this reference the allegations of
26 paragraphs 1 through 47 hereof, inclusive.

27 49. During all times relevant hereto, Marlu maintained a uniform policy of
28 requiring that there be a Manager Employee serving as MOD in each facility at all times

1 that it was operating. Marlu’s uniform policy mandates that the employee serving as the
2 MOD cannot leave the restaurant for a meal or rest break if he or she is the only Manager
3 Employee on duty. This situation is very common because the labor budgets for each
4 restaurant make it very difficult to pay the wages of more than one manager at a time.

5 50. Each time that Marlu employed a Manager Employee to work a shift longer
6 than five hours as the MOD without another Manager Employee on the shift during the
7 first five hours to relieve the MOD, Marlu failed to relieve the Manager Employee
8 working as MOD from duty for a meal break as required by Labor Code §§512, 1198 and
9 the operative Wage Order.

10 51. At least 18 of the restaurants operated by Marlu are open 24 hours per day
11 and thus have an overnight or “graveyard shift.” Most commonly, the graveyard shift is
12 staffed by just two employees.

13 52. During all times relevant hereto, Marlu maintained a uniform policy of
14 forbidding employees who work a graveyard shift from leaving the restaurant.

15 53. Each time that Marlu employed an employee on a graveyard shift for more
16 than five hours, Marlu failed to relieve the employee from duty for a meal break as
17 required by Labor Code §§512, 1198 and the operative Wage Order.

18

19

SECOND CAUSE OF ACTION

20

(Private Attorney General Claim for Failure to Pay Wages as

21

Required by California Labor Code §204)

22

54. Plaintiffs re-allege and incorporate herein by this reference the allegations of
23 paragraphs 1 through 53 hereof, inclusive.

24

55. Under Labor Code §204 wages are due and payable twice in each month.

25

56. Even when Defendants’ own database shows that an employee has worked
26 without being provided a required meal break, Defendants maintain a uniform policy of
27 refusing to pay the wages required by Labor Code §226.7.

28

1 57. The wages required by Labor Code §226.7 became due and payable to each
2 Manager Employee in each pay period that he or she was not provided with a meal break
3 or permitted to take a rest break to which he or she was entitled.

4 58. Marlu violated Labor Code §204 by systematically refusing to pay wages
5 due under Labor Code §226.7 even when Marlu’s own records indicated that an Hourly
6 Employee was not provided with a meal break to which he or she was entitled.

7 59. At all times relevant hereto, Marlu has used a two-week pay period for
8 compensation of General Managers in California.

9 60. At all times relevant hereto, Marlu General Managers in California have
10 regularly performed more than one hour of on-call work in a week.

11 61. At all times relevant hereto, Marlu General Managers in California have
12 regularly performed more than two hours of on-call work in a pay period.

13 62. At all times relevant hereto, Marlu has refused to pay General Managers in
14 California for on-call work.

15 63. Marlu is guilty of the tort of conversion with regard to each wage payment
16 that the Company has withheld from a General Manager.

17 64. At all times relevant hereto, Marlu acted willfully with oppression, fraud
18 and malice to deprive employees of wages to which they are entitled.

19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION

**(Private Attorney General Claim for Failure to Pay Wages Upon Termination as
Required by Labor Code §§201 and 202)**

23 65. Plaintiffs re-allege and incorporate herein by this reference the allegations of
24 paragraphs 1 through 64 hereof, inclusive.

25 66. At all times relevant hereto, Marlu has terminated Manager Employees who
26 were entitled to wages pursuant to Labor Code §226.7 at the time that the Manager
27 Employee’s employment with Marlu ended.

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

67. At all times relevant hereto, Marlu’s Manager Employees who have voluntarily quit their jobs and were entitled to wages pursuant to Labor Code §226.7 at the time that the Manager Employee’s employment with Marlu ended.

68. Marlu maintains a policy and practice of refusing to pay any Manager Employee the wages to which he or she is entitled under Labor Code §226.7 upon that Manager Employee’s termination or resignation.

69. Marlu maintains a policy and practice of refusing to pay any Manager Employee the wages to which he or she is entitled under Labor Code §226.7 at any time after that Manager Employee’s termination or resignation.

70. At all times relevant hereto, Marlu has willfully failed to pay the wages due for on-call work due to each General Manager who was terminated or quit his or her job at Marlu.

71. At all times relevant hereto, Marlu has willfully failed to pay the overtime premium due for on-call work due to each General Manager who was terminated or quit his or her job at Marlu.

72. Each Plaintiff who is a former Marlu employee was entitled to unpaid wages at the time that his or her employment with Marlu ended, and Marlu refused to pay.

FOURTH CAUSE OF ACTION

(Private Attorney General Claim for Mandatory Enforcement of a Payroll Card Program in Violation of Labor Code §213(d))

73. Plaintiffs re-allege and incorporate herein by this reference the allegations of paragraphs 1 through 72 hereof, inclusive.

74. In 2015, Marlu introduced a mandatory Payroll Card program at all locations of the Jack in the Box franchise brand. In this Complaint, Plaintiffs will refer to these locations as “Mandatory Payroll Card Locations.”

1 83. Each shift on which Marlu failed to relieve an hourly employee of duty for a
2 required meal break can be identified through a computer analysis of the single work hour
3 and meal break database maintained by Defendants.

4 84. Even when Marlu’s own database shows that an employee has worked
5 without being provided a required meal break, Marlu maintains a uniform policy of
6 refusing to pay the wages required by Labor Code §226.7.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

(Private Attorney General Claim for Failure to Provide Suitable Seats in Violation of California Wage Order and Labor Code §1198)

85. Plaintiff re-alleges and incorporates herein by this reference the allegations of paragraphs 1 through 84 hereof, inclusive.

86. Paragraph 14 of the Wage Order states, “(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

87. Labor Code §1198 requires that Defendants comply with the Wage Order.

88. The cashier areas within Defendants’ stores contain ample space for seats for employees and the nature of that work reasonably permits the use of a seat.

89. Defendants have uniformly failed to provide employees with seats in violation of Wage Order 7-2001 and Labor Code §1198.

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

SEVENTH CAUSE OF ACTION

**(Failure to Provide an Accurate Itemized Paystub in
Violation of California Labor Code §226)**

90. Plaintiff re-alleges and incorporates herein by this reference the allegations of paragraphs 1 through 89 hereof, inclusive.

91. California Labor Code §226(a) requires that each pay period Marlu must provide each employee with an itemized statement of wages that includes, among other things, the name and address of the legal entity that is the employer, the inclusive dates of the period for which the employee is paid, all hourly rates applicable to work performed in that pay period, the hours worked by the employee, the gross wages earned by the employee and the net wages earned by the employee.

92. Until mid-January 2015, Marlu failed to provide any of its California employees with an itemized statement of wages that showed the name and address of the legal entity that is the employer. In fact, Defendants’ paystubs listed no employer at all. This violation of Labor Code §226(a) affected all hourly employees in California and constitutes a violation independent from any failure to pay wages for overtime premium described herein.

93. Until mid-January 2015, Marlu failed to provide any of its California employees with an itemized statement of wages that showed the inclusive dates of the period for which the employee was paid. In fact, Defendants’ paystubs listed only the end date of the pay period. This violation of Labor Code §226(a) affected all hourly employees in California and constitutes a violation independent from any failure to pay wages for overtime premium described herein.

1 94. Until mid-January 2015, Marlu failed to provide any of its California
2 employees with an itemized statement of wages that showed the applicable hourly rates in
3 effect during the pay period. In fact, Defendants’ paystubs listed no hourly rate
4 information. This violation of Labor Code §226(a) affected all hourly employees in
5 California and constitutes a violation independent from any failure to pay wages for
6 overtime premium described herein.

7 95. At all times relevant hereto, Marlu has failed to provide any of its California
8 General Managers with an itemized statement of wages that accurately states the total
9 hours worked by the General Manager in that each statement omits on-call hours worked.

10 96. At all times relevant hereto, Marlu has failed to provide any of its General
11 Managers with an itemized statement that accurately states the net wages earned by the
12 General Manager in that each statement omitted wages due for on-call hours worked.

13 97. At all times relevant hereto, Marlu has failed to provide any of its General
14 Managers with an itemized statement that accurately states the gross wages in that each
15 statement omitted wages due for on-call hours worked.

16 98. At all times relevant hereto, Marlu has failed to provide any of its General
17 Managers with an itemized statement that accurately states the net wages earned by the
18 General Manager in that each statement omitted overtime premiums due for on-call hours
19 worked.

20 99. At all times relevant hereto, Marlu has failed to provide any of its General
21 Managers with an itemized statement that accurately states the gross wages earned by the
22 General Manager in that each statement omitted overtime premiums due for on-call hours
23 worked.

24 100. Since at least 2015, Marlu failed to provide any of its California employees
25 working at franchise locations associated with Cardinal Appliance & Hardware with an
26 itemized statement of wages that showed the name and address of the legal entity that is
27 the employer. Defendants’ paystubs listed no employer at all.
28

1 101. Since at least 2015, Marlu failed to provide any of its California employees
2 working at franchise locations associated with Cardinal Appliance & Hardware with an
3 itemized statement of wages that showed the inclusive dates of the period for which the
4 employee was paid. Defendants’ paystubs listed only the end date of the pay period.

5 102. Since at least 2015, Marlu failed to provide any of its California employees
6 working at franchise locations associated with Cardinal Appliance & Hardware with an
7 itemized statement of wages that showed the applicable hourly rates in effect during the
8 pay period. Defendants’ paystubs listed no hourly rate information.

9 103. Since at least 2015, Marlu failed to provide any of its California employees
10 with an itemized statement of wages that showed gross or net wages earned in that each
11 statement omitted Section 226.7 wages earned by the employee.

12
13 **EIGHTH CAUSE OF ACTION**

14 **(Failure to Pay Wages as Required by 29 U.S.C. §206)**

15 104. Plaintiff realleges and incorporates herein by this reference the allegations
16 of Paragraphs 1 through 103 hereof, inclusive.

17 105. 29 U.S.C. §206 requires Defendants to pay at least the statutory minimum
18 wage for all hours worked by anyone that they employ.

19 106. At all times relevant hereto Defendants have violated 29 U.S.C. §206 by
20 refusing to pay any wages for on-call work performed by General Managers.

21 107. At all times relevant hereto, Marlu has acted willfully and deliberately with
22 oppression, fraud and malice to deprive its employees of the wage premiums to which
23 they are entitled.

24
25 **NINTH CAUSE OF ACTION**

26 **(Failure to Pay Overtime Wages as Required by 29 U.S.C. §207)**

27 108. Plaintiff realleges and incorporates herein by this reference the allegations
28 of Paragraphs 1 through 107 hereof, inclusive.

ELEVENTH CAUSE OF ACTION

**(Failure to Pay Overtime Wages in Violation of
California Labor Code §§510 and 1194)**

117. Plaintiff realleges and incorporates herein by this reference the allegations of Paragraphs 1 through 116 hereof, inclusive.

118. At all times relevant hereto, California Labor Code §510 has required that Marlu pay each of its General Managers 1 ½ times his or her regular rate of pay for any work in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and for the first 8 hours of work on the seventh day of a workweek.

119. At all times relevant hereto, California Labor Code §510 requires that Marlu pay each of its General Managers two times his or her regular rate of pay for any work in excess of 12 hours in one workday on the first six days of the workweek, and in excess of 8 hours on the seventh day of a workweek.

120. Because Marlu requires General Managers in California to work more than 40 hours per week in a restaurant and on-call time is in addition to work in the restaurant, all unpaid on-call hours are subject to an overtime premium of either time-and-a-half or double-time.

121. At all times relevant hereto, Marlu has refused to pay the overtime premium due on unpaid on-call work hours.

122. Because Marlu refused to pay any overtime premium due on unpaid on-call work hours, the company owes each General Manager either the time-and-a-half premium or the double-time premium for every hour of unpaid on-call work.

123. At all times relevant hereto, General Managers in California have regularly worked on-call work hours on days in which the General Manager worked more than twelve hours.

124. At all times relevant hereto, General Managers in California have regularly worked on-call hours on days in which the General Manager worked more than eight hours and that were on the seventh consecutive day that the General Manager had worked.

1 133. At all times relevant hereto, Labor Code §2802 has required Defendant to
2 reimburse all employees for necessary expenditures incurred by the employee in direct
3 consequence of the discharge of his or her duties or of his or her obedience to the
4 directions of the employer.

5 134. At all times relevant hereto, Marlu required every General Manager to own
6 and maintain a cell phone in order to be available to take work-related calls 24 hours per
7 day and 7 days per week.

8 135. At all times relevant hereto, Marlu maintained a policy and uniform practice
9 of both contacting General Managers on their cell phones and requiring General Managers
10 to use their cell phone to contact Marlu employees and executives.

11 136. At all times relevant hereto, Marlu maintained a policy and uniform practice
12 of requiring each General Manager to use his or her personal vehicle to drive for the
13 benefit of Marlu. This driving included travel to and from other Marlu locations to pick
14 up supplies, and travel to and from meeting locations.

15 137. At all times relevant hereto, Marlu maintained a uniform policy of refusing
16 to pay for any of the costs associated with the cell phone that each General Manager was
17 required to maintain.

18 138. At all times relevant hereto, Marlu maintained a uniform policy of refusing
19 to pay for any of the costs associated with the vehicle use that Marlu required from each
20 General Manager.

21

22

FOURTEENTH CAUSE OF ACTION

23

(Representative Claim for Violation of

24

Business and Professions Code §17200 et seq.)

25

26

139. Plaintiff re-alleges and incorporates herein by this reference the allegations
of paragraphs 1 through 138 hereof, inclusive.

27

28

140. The conduct described in the First through Third, Fifth, and Eighth through
Thirteenth Causes of Action constitutes an unfair business practice.

1 141. By deliberately failing to pay its hourly employees wages to which they are
2 entitled, Marlu avoided substantial expenses and thereby enriched itself at the expense of
3 its hourly employees.

4 142. Marlu maintains a uniform policy of never paying meal break premium
5 wages in the circumstances described in this Complaint.

6 143. The Marlu policy of refusing to pay meal break premium wages is unfair
7 under Bus. & Prof. Code §17200, in light of the statutes and public policy regarding
8 timely payment of wages.

9 144. All employees subject to the Marlu policy of refusing to pay meal break
10 premium wages lost a substantial portion of the value they were otherwise guaranteed as
11 part of their employment. Had they taken comparable jobs at comparable pay with other
12 (presumably law-abiding) companies, the employees would have received the benefits of
13 these statutory protections and would not have suffered this loss.

14 145. The value of the loss to employees and the amount of restitution owed to
15 employees can be determined by a market value approach relying primarily on evidence
16 of Defendants' own conduct.

17
18 **CLASS ACTION ALLEGATIONS**

19 146. Plaintiffs re-allege and incorporate herein by this reference the allegations of
20 paragraphs 1 through 145 hereof, inclusive.

21 147. Marlu employs over 100 Manager Employees in California who have been
22 subject to the violations described in this Complaint within the applicable statute of
23 limitations and are entitled to the relief described herein.

24 148. Plaintiffs are informed and believe, and thereon allege, that all of Marlu's
25 Manager Employees in California have been subject to Marlu's violations of the
26 California Labor Code and the California Wage Orders described in the Class Action
27 Causes of Action herein.
28

1 **ON THE SECOND CAUSE OF ACTION:**

- 2 1. For civil penalties on behalf of the State of California and current and former hourly
3 employees pursuant to Labor Code §210; and
4 2. For attorney fees and costs reasonably incurred in accordance with California Labor
5 Code §2699, and California Code of Civil Procedure §1021.5.

6
7 **ON THE THIRD CAUSE OF ACTION:**

- 8 1. For waiting time penalties on behalf of the State of California and current and former
9 hourly employees pursuant to Labor Code §203; and
10 2. For attorney fees and costs reasonably incurred in accordance with California
11 Labor Code §2699, and California Code of Civil Procedure §1021.5.

12
13 **ON THE FOURTH CAUSE OF ACTION:**

- 14 1. For civil penalties on behalf of the State of California and current and former hourly
15 employees pursuant to Labor Code §2699(f); and
16 2. For attorney fees and costs reasonably incurred in accordance with California
17 Labor Code §2699, and California Code of Civil Procedure §1021.5.

18
19 **ON THE FIFTH CAUSE OF ACTION:**

- 20 1. For damages according to proof;
21 2. For temporary, preliminary, and permanent injunctive relief against Defendants'
22 ongoing violations of the Labor Code;
23 3. For wages on behalf of current and former hourly employees pursuant to
24 Labor Code §226.7;
25 4. For attorney fees and costs reasonably incurred in accordance with California Labor
26 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
27 5. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287.

28

1 **ON THE SIXTH CAUSE OF ACTION:**

- 2 1. For temporary, preliminary, and permanent injunctive relief against Defendants’
3 ongoing violations of the Labor Code;
4 2. For civil penalties on behalf of the State of California and current and former Hourly
5 Employees pursuant to Labor Code §§1198 and 2699; and
6 3. For attorney fees and costs reasonably incurred in accordance with California
7 Labor Code §2699, and California Code of Civil Procedure §1021.5.
8

9 **ON THE SEVENTH CAUSE OF ACTION**

- 10 1. For temporary, preliminary, and permanent injunctive relief against Defendants’
11 ongoing violations of the Labor Code;
12 2. For penalties pursuant to Labor Code §226(e);
13 3. For penalties pursuant to Labor Code §226.3;
14 4. For civil penalties pursuant to Labor Code §2699;
15 5. For attorney fees and costs reasonably incurred, in accordance with
16 California Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure
17 §1021.5;
18 6. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287.
19

20 **ON THE EIGHTH CAUSE OF ACTION:**

- 21 1. For damages according to proof;
22 2. For lost wages;
23 3. For liquidated damages pursuant to 29 U.S.C. §216(b);
24 4. For temporary, preliminary and permanent injunctive relief against Defendants’
25 ongoing violations of the Fair Labor Standards Act; and
26 5. For reasonable attorney fees and costs.
27
28

1 **ON THE NINTH CAUSE OF ACTION:**

- 2 1. For damages according to proof;
3 2. For lost wages;
4 3. For liquidated damages pursuant to 29 U.S.C. §216(b);
5 4. For temporary, preliminary and permanent injunctive relief against Defendants'
6 ongoing violations of the Fair Labor Standards Act; and
7 5. For reasonable attorney fees and costs.

8
9 **ON THE TENTH CAUSE OF ACTION:**

- 10 1. For damages according to proof;
11 2. For lost wages;
12 3. For temporary, preliminary and permanent injunctive relief against Defendants'
13 ongoing violations of the Fair Labor Standards Act; and
14 4. For reasonable attorney fees and costs.

15
16 **ON THE ELEVENTH CAUSE OF ACTION:**

- 17 1. For damages according to proof;
18 2. For restitution of unpaid wages;
19 3. For disgorgement of Defendants' ill-gotten gains;
20 4. For civil penalties pursuant to Labor Code §§558 and 2699;
21 5. For attorney fees and costs reasonably incurred, in accordance with
22 California Labor Code §§218.5, 2699, 1194, and California Code of Civil Procedure
23 §1021.5;
24 6. For interest pursuant to Labor Code §§218.6 and 1194, and Civil Code §3287; and
25 7. For punitive damages.

26
27
28

1 **ON THE TWELFTH CAUSE OF ACTION:**

- 2 1. For temporary, preliminary and permanent injunctive relief against Defendants’
3 ongoing violations of the Labor Code;
4 2. For civil penalties pursuant to Labor Code §2699; and
5 3. For attorney fees and costs incurred, in accordance with California Labor Code
6 §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5.

7
8 **ON THE THIRTEENTH CAUSE OF ACTION:**

- 9 1. For damages according to proof;
10 2. For restitution of unpaid employee business expenses;
11 3. For temporary, preliminary and permanent injunctive relief against Defendants’
12 ongoing violations of the Labor Code;
13 4. For civil penalties pursuant to Labor Code §2699 and all other applicable penalties;
14 5. For attorney fees and costs reasonably incurred, in accordance with
15 California Labor Code §§218.5, 2802, 2699, 1194, and California Code of Civil
16 Procedure §1021.5; and
17 6. For interest pursuant to Labor Code §§2802, 218.6 and 1194, and
18 Civil Code §3287.

19
20 **ON THE FOURTEENTH CAUSE OF ACTION:**

- 21 1. For temporary, preliminary, and permanent injunctive relief against Defendants’
22 ongoing violations of the Labor Code;
23 2. For disgorgement of Defendants’ ill-gotten gains and other relief that may be
24 necessary to remedy Defendants’ misconduct;
25 3. For restitution of payments unlawfully withheld from hourly employees in California;
26 4. For attorney fees and costs reasonably incurred pursuant to California Code of Civil
27 Procedure §1021.5; and
28 5. For interest pursuant to Civil Code §3287.

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

ON ALL CAUSES OF ACTION:

1. For costs of suit, to the extent not otherwise prayed for above; and
2. For attorney fees and costs to the extent not otherwise prayed for above.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

DATED: November 8, 2016 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

Exhibit 3

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
2 JOSHUA D. CARLON, SB# 263838
3 E-Mail: Joshua.Carlon@lewisbrisbois.com
4 633 West 5th Street, Suite 4000
5 Los Angeles, California 90071
6 Telephone: 213.250.1800
7 Facsimile: 213.250.7900

8 Attorneys for Defendants

9 **THE GRAVES FIRM**
10 ALLEN GRAVES (SB#204580)
11 allen@gravesfirm.com
12 JACQUELINE TREU (SB#247927)
13 jacqueline@gravesfirm.com
14 122 N. Baldwin Ave., Main Floor
15 Sierra Madre, CA 91024
16 Telephone: (626) 240-0575
17 Facsimile: (626) 737-7013

18 Attorneys for Plaintiff
19 Joe Ortiz

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA

22 Joe Ortiz,

23 Plaintiff,

24 v.

25 Marlu Restaurant Group, Inc.,
26 Marlu LC, INC., Marlu Stockton
27 LLC, Prestige Management LLC,
28 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.,
Smart Sears, and DOES 1 through
10, inclusive,

CASE NO: SACV14-01790 DOC (RNBx)

**ORDER TO STAY MATTER IN
LIGHT OF SETTLEMENT**

Courtroom: 9D
Judge: Hon. David O. Carter

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


Defendants.

The Court has considered the Parties' Stipulation to Stay Matter in Light of Settlement, and for good cause shown, orders as follows:

1. The Parties shall file an executed Stipulation and Settlement of Class Action Claims no later than Tuesday, November 16, 2016.
2. Upon filing of the executed Settlement Agreement, this case is stayed pending approval of the settlement in *Barajas et al. v. Marlu Restaurant Group, Inc., et al.* BC 630452, currently pending in Los Angeles Superior Court.
3. The Court hereby sets a Status Conference between the Court and the Parties in this matter for 8:30 a.m. on July 10, 2017.

IT IS SO ORDERED.

DATED: November 10, 2016

By: 

The Honorable David O. Carter
United States District Judge

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 14-1790-DOC (DFMx)

Date: November 21, 2016

Title: JOE ORTIZ V. MARLU RESTURANT GROUP, INC. ET AL.

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Deborah Goltz
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR
DEFENDANT:
None Present

PROCEEDINGS (IN CHAMBERS): ORDER DISMISSING CASE

The Court, having been notified by counsel for the parties that this action has been settled through the Notice of Settlement (Dkt. 90), DISMISSES this action without prejudice. The Court orders all proceedings in the case VACATED and taken off calendar, **except the status conference set for July 10, 2017 at 8:30 a.m.** The Court retains jurisdiction for one year to vacate this order and reopen the action upon showing of good cause that the settlement has not been consummated.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11
CIVIL-GEN

Initials of Deputy Clerk: djg

PROOF OF SERVICE

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

) ss:

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:

- **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR AN ORDER FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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.

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

- **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR AN ORDER FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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

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.

Kevin Karr

Type or Print Name



Signature