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22 MAXIM HEALTHCARE SERVICES, INC.

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24 UNITED STATES DISTRICT COURT  
25 CENTRAL DISTRICT OF CALIFORNIA

26 KURT CASADINE individually, and on  
27 behalf of other members of the general  
28 public similarly situated,

Plaintiff,

v.

MAXIM HEALTHCARE SERVICES,  
INC., a Maryland corporation; and  
DOES 1 through 100, inclusive,

Defendants.

Case No. 2:12-cv-10078-DMG-CW

**STIPULATION AND  
SETTLEMENT AGREEMENT**

1  
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21  
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23 KURT CASADINE as an Individual and On Behalf of All Similarly Situated  
24 Employees  
25  
26  
27  
28

1 IT IS HEREBY STIPULATED AND AGREED by and between Kurt  
2 Casadine and Alfred Guerrero ("Plaintiffs" or "Class Representatives"), on behalf of  
3 themselves and all others similarly situated, on the one hand; and Maxim Healthcare  
4 Services, Inc. ("Maxim" or "Defendant"), on the other hand, (collectively "the  
5 Settling Parties") as set forth below:

6 **I. THE CONDITIONAL NATURE OF THIS STIPULATION**

7 This Stipulation and Settlement Agreement and all associated exhibits  
8 (collectively the "Stipulation" or "Settlement") is made for the sole purpose of  
9 settling the above-captioned action on a class-wide and collective action basis. This  
10 Stipulation and the Settlement it evidences is made in compromise of disputed  
11 claims. Because this action was pled as class action, this settlement must receive  
12 both preliminary and final approval by the Court. Accordingly, the Settling Parties  
13 enter into this Stipulation and associated settlement on a conditional basis. In the  
14 event the Court does not enter an Order of Final Approval, or in the event the  
15 associated Judgment does not become a Final Judgment for any reason, this  
16 Stipulation (except for those provisions relating to non-admissibility and  
17 non-admission of liability set forth in Sections I, IV, 2.14.5, and 2.14.6) shall be  
18 deemed null and void *ab initio*, shall be of no force or effect whatsoever, and shall  
19 not be referred to or utilized by any party for any purpose whatsoever. Further, the  
20 negotiation, terms, and entry of this Stipulation shall remain subject to the provisions  
21 of Federal Rule of Evidence 408, and any other analogous rules of evidence that are  
22 applicable.

23 Defendant denies all claims as to liability, damages, penalties, interest,  
24 attorneys' fees or costs, restitution, injunctive relief and all other forms of relief, as  
25 well as the collective and class allegations asserted in the Litigation, as that term is  
26 defined below. Defendant has agreed to resolve the Litigation via this Stipulation,  
27 but to the extent this Stipulation is deemed void or the Effective Date does not occur,  
28 does not waive any procedural or substantive defenses but rather expressly reserves

1 all rights to those defenses to challenge such claims and allegations in the Litigation  
2 upon all procedural and factual grounds, including, without limitation, the ability to  
3 challenge class or collective action treatment on any grounds, including, as  
4 applicable to a particular case, through an opposition to a motion for certification, a  
5 motion for decertification, a motion for dismissal of certain claims or plaintiff(s),  
6 and/or a motion for summary judgment as to any claims or plaintiff(s), as well as  
7 asserting any and all other potential defenses or privileges. The Class Representative  
8 and Class Counsel (as defined in Section VI, 1.6, 1.8) agree that Defendant retains  
9 and reserves all of these rights and they agree not to take any position to the contrary;  
10 specifically, the Class Representative and Class Counsel agree not to argue or present  
11 any argument, and hereby waive any argument, that based upon this Stipulation,  
12 Defendant cannot contest class, collective or representative certification on any  
13 grounds or through any means, file motions for dismissal and/or summary judgment  
14 as to any claims or plaintiff(s), and/or assert any and all other potential defenses and  
15 privileges if the Litigation were to proceed.

16 Similarly, to the extent this Stipulation is deemed void or the Effective Date  
17 does not occur, the Class Representatives do not waive, but rather expressly reserves,  
18 all rights to prosecute all such pending claims and allegations in the Litigation upon  
19 all procedural and factual grounds, including, without limitation, through motions for  
20 class certification, opposing a motion for decertification, and/or motions for  
21 summary judgment as well as any and all other rights and remedies available to Class  
22 Representatives. Defendant agrees that the Class Representatives, both individually  
23 and on behalf of all others aggrieved and/or similarly situated, retains and reserves  
24 these rights and it agrees not to take any position to the contrary; specifically,  
25 Defendant agrees not to argue or present any argument, and hereby waives any  
26 argument, that based upon this Stipulation, the Class Representatives cannot seek  
27 class certification, oppose decertification, or move for summary judgment on any of  
28 his pending claims or Defendant's defenses if the Litigation were to proceed.

1 **II. THE PARTIES TO THIS STIPULATION**

2 This Stipulation is made and entered into by and among the following Settling  
3 Parties: (i) the Class Representatives (on behalf of themselves and each of the  
4 Settlement Class Members), with the assistance of Class Counsel; and (ii) Defendant,  
5 with the assistance of its counsel of choice. This Stipulation is intended by the  
6 Settling Parties to fully, finally, and forever resolve, discharge, and settle the  
7 Litigation and the Released Claims (defined below) upon and subject to the terms  
8 and conditions hereof.

9 **III. THE LITIGATION**

10 On October 24, 2012, Plaintiffs Kurt Casadine and Ronald Kroenig filed a  
11 Complaint against Maxim in the Superior Court of the State of California, County of  
12 Los Angeles asserting claims for failure to pay wages, failure to provide meal and  
13 rest periods, failure to pay wages upon termination, failure to provide accurate and  
14 itemized wage statements, and violations of the Unfair Competition Law ("Original  
15 Complaint"). The Original Complaint states that Casadine and Kroenig seek relief  
16 on their own behalf and on behalf of an alleged class of similarly situated and  
17 aggrieved current and former "non-exempt" employees who in the last four years  
18 have been employed by Maxim in California.

19 On November 21, 2012, Maxim filed its Answer, denying the allegations in  
20 the Original Complaint and asserting affirmative defenses. On November 26, 2012,  
21 Maxim removed the lawsuit to the United States District Court for the Central  
22 District of California pursuant to jurisdiction under the Class Action Fairness Act of  
23 2005 ("CAFA"), 28 U.S.C. § 1453.

24 On April 19, 2013, the Parties filed a stipulation to allow Plaintiffs to file an  
25 amended complaint. The Parties agreed that Defendant's Answer to the Original  
26 Complaint, including all denials, responses, and affirmative defenses shall be  
27 responsive to the amended complaint. Plaintiffs filed a First Amended Complaint  
28 ("FAC") on April 24, 2013. See Dkt. #16. Their class definition was amended to

1 include "all non-exempt employees in California" who "were not paid all lawful  
2 wages as minimum wages" as well as all former California employees who were not  
3 paid all wages owed at the time of termination in violation of Labor Code Section  
4 203. FAC ¶25. Plaintiff's FAC asserted claims for failure to pay minimum wages,  
5 failure to pay wages due upon termination, failure to provide accurate and itemized  
6 wage statements, and violations of the Unfair Competition Law.

7 On August 2, 2013, Plaintiff's counsel filed a request to dismiss Plaintiff  
8 Ronald Kroenig as a class representative and named plaintiff. On August 12, 2013,  
9 the Court entered an Order dismissing Mr. Kroenig as a class representative and  
10 plaintiff, without prejudice.

11 On February 19, 2014, the Parties filed a stipulation to allow Plaintiff to file a  
12 Second Amended Complaint to amend the proposed class definitions for the classes  
13 Plaintiff seeks to represent. The Parties agreed that Defendant's Answer to the  
14 Original Complaint, including all denials, responses, and affirmative defenses shall  
15 be responsive to the amended complaint. With leave from the Court, Plaintiff filed a  
16 Second Amended Complaint on March 4, 2014. Plaintiff's SAC amended the class  
17 definition to include all "employees in the positions including but not limited to,  
18 certified home health aide / home health aide, companion care homemaker /  
19 companion care provider, companion caregiver, and caregiver -personal care  
20 assistant." SAC ¶ 23.

21 Through substantial formal and informal discovery occurring over a year, the  
22 Parties obtained a large amount of information about the claims and defenses in this  
23 matter, including hundreds of documents, such as policies, training materials, emails  
24 and reports and class data. Defendant took Plaintiff's deposition. Plaintiff took the  
25 deposition of two of Defendant's Federal Rule of Civil Procedure ("FRCP") 30(b)(6)  
26 witnesses, and the depositions of Plaintiff's managers.

27 On May 5, 2014, Plaintiff filed his Motion for Class Certification in this  
28 matter. Dkt. 55. On July 14, 2014, Defendant filed its Opposition to Plaintiff's

1 Motion for Class Certification, and on July 28, 2014, Plaintiff filed its Reply brief in  
2 Support of its Motion for Class Certification. Dkt. 60, 63. The hearing on Plaintiff's  
3 Motion for Class Certification took place on August 29, 2014. Dkt. 67. On  
4 September 9, 2014, the Court ordered the Parties to meet and confer and submit  
5 supplemental briefing. Dkt. 69. On November 17, 2014, Plaintiff submitted  
6 supplemental briefing on his third cause of action for failure to provide accurate  
7 wage statements pursuant to Labor Code Section 226. Dkt. 72. Maxim filed its  
8 opposition on December 8, 2014. Dkt. 75. The Parties thereafter began settlement  
9 negotiations.

10 **IV. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY**

11 Defendant specifically and generally denies all of the claims asserted in the  
12 Litigation, denies any and all liability or wrongdoing of any kind whatsoever  
13 associated with any of the facts or claims alleged in the Litigation, and makes no  
14 concession or admission of wrongdoing or liability of any kind whatsoever.  
15 Defendant maintains that all putative class members were and always have been  
16 properly paid and classified, that no overtime of any kind is owed to them, and that,  
17 for any purpose other than settlement, the Litigation is not suitable or appropriate for  
18 class, collective or representative action treatment pursuant to either Federal Rule of  
19 Civil Procedure 23 or the Fair Labor Standards Act. Nonetheless, Defendant  
20 concluded that the further defense of the Litigation would be protracted and  
21 expensive, and that it is desirable that the Litigation be fully and finally settled in the  
22 manner and upon the terms and conditions set forth in this Stipulation. In reaching  
23 this conclusion, Defendant has taken into account the uncertainty and risks inherent  
24 in any litigation. Defendant has determined that it is desirable and beneficial for it to  
25 settle the Litigation in the manner and upon the terms and conditions set forth in this  
26 Stipulation.

1 **V. CLAIMS OF THE CLASS REPRESENTATIVE AND BENEFITS OF**  
2 **SETTLEMENT**

3 The Class Representatives and Class Counsel believe that the claims asserted  
4 in the Litigation and specifically alleged in his Second Amended Complaint and  
5 (proposed) Third Amended Complaint have merit and that evidence developed to  
6 date supports their claims. However, the Class Representatives and Class Counsel  
7 recognize and acknowledge the expense and length of time associated with the need  
8 to prosecute the Litigation through trial and through appeals. The Class  
9 Representatives and Class Counsel have also taken into account the uncertain  
10 outcome and the risk associated with any litigation, as well as the difficulties and  
11 delays inherent in any litigation. Based upon their evaluation, the Class  
12 Representatives and Class Counsel have determined that the Settlement set forth in  
13 this Stipulation is in the best interests of the Class Representative and the Settlement  
14 Class.

15 **VI. CONDITIONS PRECEDENT TO SETTLEMENT**

16 The Parties enter into this Stipulation and the Settlement on a conditional basis  
17 based upon the following:

18 1. Notification to the LWDA. On April 10, 2015, Class Counsel on behalf  
19 of Alfred Guerrero provided written notice to the Labor Workforce Development  
20 Agency ("LWDA") of certain alleged Labor Code violations pursuant to the Labor  
21 Code Private Attorneys General Act ("PAGA"). As of May 4, 2015, Class Counsel  
22 has received no notification from the LWDA that it intends to investigate the alleged  
23 violations. Accordingly, Class Counsel believes that Alfred Guerrero will obtain the  
24 right to commence a civil action pursuant to Labor Code Section 2699.

25 2. Filing the Third Amended Complaint. The Parties anticipate that on or  
26 about May 4, 2015, they will file a Stipulation seeking leave of Court to file the Third  
27 Amended Complaint ("TAC") adding a claim under PAGA, brought by additional  
28 Plaintiff Alfred Guerrero. The parties will propose to the Court that Defendant will



1 not be required to answer the TAC unless the Settlement is not finally approved.

2 3. Court Approval and Judgment. As set forth in Section I, This  
3 Stipulation and Settlement will become final and effective only upon the occurrence  
4 of all of the following events as set forth below:

5 (a) The Court enters an Order granting Preliminary Approval of the  
6 Settlement;

7 (b) The Effective Date occurs, and any challenge to the Settlement,  
8 whether by objection or appeal, is resolved in favor of enforcement of the Settlement.

9 Unless the Court orders otherwise or agreed in writing by the Parties, this  
10 Stipulation shall be deemed null and void *ab initio* upon the failure of any of these  
11 three (3) conditions to occur.

12 **VII. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

13 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND  
14 AGREED by and between the Class Representatives (on behalf of themselves and  
15 the Settlement Class Members) and Defendant, with the assistance of their respective  
16 counsel of record, that, as among the Settling Parties, including all Settlement Class  
17 Members, the Litigation and the Released Claims shall be finally and fully  
18 compromised, settled, and released, and the Litigation shall be dismissed, with  
19 prejudice, as to all Settling Parties, upon and subject to the terms and conditions of  
20 this Stipulation and the Judgment.

21 **I. Definitions.**

22 As used in all parts of this Stipulation, the following terms have the meanings  
23 specified below:

24 1.1 "Administrative Costs" means the amount paid by Maxim directly to  
25 the Claims Administrator for its costs in connection with administering the terms of  
26 this Stipulation, including the costs of all notices set forth in Section 2.6 and its  
27 subsections.

28 1.2 "Claim Form" means the form entitled "Claim Form" in the same or

1 substantially in the form attached hereto as Exhibit B. A timely completed Claim  
2 Form must but submitted to the Claims Administrator for a Class Member to claim  
3 his/her share of the Settlement Pool and be entitled to any additional pro rata  
4 distributions that may occur. The Claim Form will also serve as written consent to  
5 release claims under the FLSA as described in Section 2.6 below.

6 1.3 "Claims Administrator" means the third-party claims administration  
7 firm of Phoenix Settlement Administrators or another administrator mutually agreed  
8 to by the Parties by no later than ten (10) business days after Preliminary Approval  
9 which shall establish an account which shall be treated at all times as a "qualified  
10 settlement fund" within the meaning of Treas. Reg. §1.468B-1, et. seq. (the  
11 "Qualified Settlement Fund" as defined below). References herein to actions and  
12 responsibilities of the Claims Administrator shall be to those actions and  
13 responsibilities it shall take in its position as administrator of the Qualified  
14 Settlement Fund.

15 1.4 "Claims Period Deadline" shall be the date forty-five (45) days after the  
16 Settlement Documents are initially mailed to the Class Members by the Claims  
17 Administrator.

18 1.5 "Class" means: (i) all individuals who worked for Maxim in California  
19 as a Live-In Caregiver, which includes certified home health aide / home health aide,  
20 companion care homemaker / companion care provider, companion caregiver, and  
21 caregiver – personal care assistant, between October 24, 2008 and March 31, 2015;

22 1.6 "Class Counsel" means, collectively, the law firms of MAHONEY  
23 LAW GROUP, APC and JOSE GARAY APLC, and their attorneys, which warrant  
24 and represent that no other law firms or attorneys are serving in any capacity as  
25 "Class Counsel."

26 1.7 "Class Member" or "Member of the Class" means an individual who is  
27 a member of the Class as defined in Section 1.5, except for individuals who  
28 previously settled or entered into a release agreement supervised by a court or agency

1 which has released the claims at issue in the Litigation.

2 1.8 "Class Period" for settlement purposes only shall mean the period  
3 running from the beginning of the applicable statute of limitations period for each  
4 class member through March 31, 2015.

5 1.9 "Class Representatives" or "Plaintiffs" means Kurt Casadine and Alfred  
6 Guerrero.

7 1.10 "Court" or "District Court" means the United States District Court for  
8 the Central District of California.

9 1.11 "Database of Class Members" means the electronic file to be provided  
10 by Defendant to the Claims Administrator containing a list of each Class Member,  
11 including each person's name, last known address, social security number, employee  
12 identification number, state(s) where employed, and number of Live-In Shifts  
13 Worked during the applicable Class Period.

14 1.12 "Defendant Releasees" means Maxim Healthcare Services, Inc., and  
15 Maxim's current, former, and future affiliates, including, without limitation, parents,  
16 subsidiaries, and related entities, predecessors, successors, divisions, joint ventures  
17 and assigns, and each of these entities' past or present directors, officers, employees,  
18 partners, members, employee benefit plan administrators and fiduciaries, principals,  
19 agents, insurers, co-insurers, re-insurers, managers, shareholders, attorneys, and  
20 personal or legal representatives, in their individual and corporate capacities.

21 1.13 "Effective Date" means the date on which the Judgment becomes a  
22 Final Judgment.

23 1.14 "Final Approval Hearing" means a hearing set by the Court, to take  
24 place on a date after the 90 day period for CAFA notice has run, for the purpose of (i)  
25 finally determining the fairness, adequacy, and reasonableness of this Stipulation and  
26 the associated Settlement pursuant to class action procedures and requirements; (ii)  
27 determining the good faith of this Stipulation and associated Settlement; (iii)  
28 determining Class Counsel's attorneys' fees and litigation costs; (iv) determining the

1 payment of Service Payments to the Class Representatives (or other Settlement Class  
2 Members agreed upon by the Settling Parties); (v) addressing any objections to the  
3 Settlement; and (vi) entering an Order of Final Approval and Judgment.

4 1.15 "Final Judgment" means the latest of: (i) the date of final affirmance on  
5 an appeal of the Judgment; (ii) the date of final dismissal, with prejudice, of the last  
6 pending appeal from the Judgment; or (iii) if no appeal is filed, the expiration date of  
7 the time for the filing or noticing of any form of valid appeal from the Judgment.

8 Notwithstanding the foregoing, any proceeding or order, or any appeal or petition for  
9 a writ pertaining solely to the award of attorneys' fees, attorneys' costs, and/or  
10 Administrative Costs shall not in any way delay or preclude the Judgment from  
11 becoming a Final Judgment.

12 1.16 "FLSA" means the Fair Labor Standards Act.

13 1.17 "Judgment" means the judgment to be rendered by the Court pursuant to  
14 this Stipulation.

15 1.18 "Last Known Address(es)" means the most recently recorded mailing  
16 address for a Class Member as such information is contained in Maxim's database(s)  
17 containing personnel and/or payroll information.

18 1.19 The "Litigation" means the above captioned matter between the Settling  
19 Parties, identified as *Casadine v. Maxim Healthcare Services, Inc.*, United States  
20 District Court for the Central District of California, Case No.  
21 2:12:-CV-10078-DMG-CW.

22 1.20 "Live-In Caregiver(s)" means those individuals currently or formerly  
23 employed by Maxim who are referred to in Maxim records under a number of  
24 different job titles, including certified home health aide / home health aide,  
25 companion care homemaker / companion care provider, companion caregiver, and  
26 caregiver – personal care assistant who worked 24-hour live-in shifts for Maxim in  
27 California.

28 1.21 "Live-In Shifts Worked" shall mean the number of twenty-four (24)

1 hour live-in shifts for which the Class Member received pay for work as a Live-In  
2 Caregiver for Maxim during the applicable Class Period (i.e. through March 31,  
3 2015).

4 1.22 "Live-In Shift Amount" means the Net Settlement Amount divided by  
5 the number of live-in shifts worked by all Class Members (*Net Settlement Amount ÷*  
6 *Live-In Shifts Worked*).

7 1.23 "Maximum Settlement Amount" shall mean the total maximum amount  
8 that Defendant shall pay under the terms of this Stipulation, which is the gross sum of  
9 Six Hundred and Thirty Thousand Dollars and No Cents (\$630,000.00), and  
10 includes, without limitation, all of Class Counsel's attorneys' fees and costs,  
11 Administrative Costs, the Service Payments to the Class Representatives, payment of  
12 the PAGA penalty payment to the LWDA, and the amounts paid to Qualified  
13 Claimants and Settlement Class Members. This amount does not include the  
14 Defendant's share of employer payroll taxes. As set forth herein, the Claims  
15 Administrator will issue all of the above-referenced payments from the Qualified  
16 Settlement Fund in accordance with the applicable provisions of this Stipulation.

17 1.24 "Net Settlement Amount" means the Maximum Settlement Amount less  
18 the Class Counsel's attorneys' fees and costs, payment to the LWDA, Administrative  
19 Costs and the Service Payment.

20 1.25 "Notice of Settlement," "Notice Regarding Pendency of Class Action"  
21 or "Class Notice" shall mean the document attached hereto as Exhibit A.

22 1.26 The "Notice Mailing Date" shall be the date on which the Claims  
23 Administrator initially mails the Settlement Documents to the Class Members, which  
24 will occur within fifteen (15) business days after the receipt of the Database of Class  
25 Members from Defendant.

26 1.27 The "Notice Response Deadline" shall be the date forty-five (45)  
27 calendar days after the Notice Mailing Date.

28 1.28 "Opt-Out(s)" means any Class Member(s) who timely requests to

1 opt-out pursuant to the procedures set forth herein.

2 1.29 "Order of Final Approval" or "Final Approval" shall mean an Order to  
3 be entered and filed by the Court granting Final Approval of this Stipulation, a  
4 proposed Order of which shall be submitted to the Court for review and approval.

5 1.30 "Preliminary Approval Date" means the date that the Court enters the  
6 Preliminary Approval Order preliminarily approving this Stipulation and approving  
7 the sending of Class Notice.

8 1.31 "Preliminary Approval Hearing" means the Court hearing to consider  
9 the preliminary approval of the terms of this Stipulation, including the sending of  
10 Class Notice.

11 1.32 "Preliminary Approval Order" means the Order of the Court  
12 preliminarily approving the terms of this Stipulation, including the conditional  
13 certification, for settlement purposes only, of a class action and approving the  
14 establishment of, and the continuing jurisdiction over, the Qualified Settlement  
15 Fund.

16 1.33 "Qualified Claimant" means a Class Member who has timely submitted  
17 a correctly completed and signed Claim Form. A Qualified Claimant shall also  
18 include a Class Member who has submitted a correctly completed and signed Claim  
19 Form that is late, but were the Claim Form is accepted by Defendant in its sole  
20 discretion, as provided herein.

21 1.34 "Qualified Settlement Fund" means the account established by the  
22 Claims Administrator which the Parties agree will at all times be treated as a  
23 "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1, et. seq.  
24 The Parties agree the Claims Administrator shall, in establishing the account, make  
25 any such elections as necessary or advisable to carry out the "relation back election"  
26 (as defined in Treas. Reg. §1.468B-1(j)(2)(i)) back to the earliest permitted date.  
27 Such elections shall be made in compliance with the procedures and requirements  
28 contained in such regulations. It shall be the responsibility of the Claims

1 Administrator to timely and properly prepare and deliver the necessary  
2 documentation for signature by all necessary Parties, and to cause the appropriate  
3 filing to occur. The Parties further agree and acknowledge that, for purposes of  
4 Section 468B of the Internal Revenue Code of 1986, as amended (the "Code") and  
5 the Treasury Regulations promulgated thereunder, only the Defendant shall be  
6 treated as a "transferor" (within the meaning of such term under Treasury  
7 Regulations § 1.468B-1(d)(1)) with respect to the Qualified Settlement Fund.

8 1.35 "Reasonable Address Verification Measure" shall mean the utilization  
9 of the National Change of Address Database maintained by the United States Postal  
10 Service to review the accuracy of and, if possible, to update, a mailing address.

11 1.36 "Released Claims," as to each member of the Settlement Class, except  
12 the Class Representatives shall mean any and all claims against Releasees that were  
13 or could have been pled based on the allegations of the Second Amended Complaint  
14 and proposed Third Amended Complaint, including, but not limited to, claims based  
15 on applicable state or local wage and hour laws and regulations, including the Private  
16 Attorneys General Act ("PAGA") that accrued or accrue through the Preliminary  
17 Approval Date, whether based on California's Wage Orders, and/or claims for wages  
18 and penalties under the California Labor Code, related tort, contract, and punitive  
19 damages claims, claims for interest, attorneys' fees, litigation and other costs,  
20 expenses, restitution, and equitable and declaratory relief, and violations of  
21 California Business & Professions Code § 17200 *et seq.* In addition, all Settlement  
22 Class Members who submit a Claim Form or receive and cash or deposit a Settlement  
23 Payment consent to the release of claims that could have been asserted under the  
24 FLSA based on the facts alleged in the Second Amended Complaint and (proposed)  
25 Third Amended Complaint, including claims for wages, penalties, liquidated  
26 damages, interest, attorneys' fees, costs and equitable relief.

27 1.37 "Released Claims" as to the Class Representatives means any and all  
28 claims arising out of their employment with Maxim, both known and unknown, as set

1 forth below in Section 2.9.1.

2 1.38 "Service Payments" means an amount approved by the Court to be paid  
3 to the Class Representatives as set forth in Section 2.10.2, in recognition of his efforts  
4 in coming forward as a Class Representatives or otherwise benefiting the Class.

5 1.39 "Settlement" means the terms and conditions set forth in the  
6 "Stipulation" as defined herein.

7 1.40 "Settlement Class" or "Settlement Class Members" means all of the  
8 Class Members who do not Opt-Out of the Settlement Class by timely submitting an  
9 opt-out request pursuant to Section 2.6.4. As set forth herein, all Settlement Class  
10 Members will be bound by the Released Claims portion of the Judgment if the  
11 Effective Date occurs.

12 1.41 "Settlement Documents" means the Class Notice (attached hereto as  
13 Exhibit A, and the Claim Form (attached hereto as Exhibit B).

14 1.42 "Settling Parties" or the "Parties" means Defendant and the Class  
15 Representatives on behalf of themselves and the Settlement Class.

16 1.43 "Settlement Payment(s)" means the portion of the Net Settlement  
17 Amount allocated and distributable to each Qualified Claimant and Settlement Class  
18 Member from the Qualified Settlement Fund, based on the number of Live-In Shifts  
19 Worked by the Settlement Class Member as a Live-In Caregiver during the  
20 applicable Class Period (through March 31, 2015). Only individuals who have not  
21 Opted-Out are eligible to receive a Settlement Payment under this Stipulation.

22 1.44 "Stipulation" means this Stipulation and Settlement Agreement together  
23 with all of its attachments and exhibits, which the Settling Parties understand and  
24 agree sets forth all material terms and conditions of the Settlement between them, and  
25 which is subject to Court approval. It is understood and agreed that, except with  
26 respect to the payment of any Administrative Costs actually incurred, Defendant's  
27 obligations for payment under this Stipulation are conditioned on, *inter alia*, the  
28 occurrence of the Effective Date.



1 1.45 "Updated Address" means a mailing address that was updated via a  
2 Reasonable Address Verification Measure or via an updated mailing address  
3 provided by the United States Postal Service or a Class Member, or any other source.

4 2. **The Settlement**

5 2.1 *Certification of a Class Action for Settlement Purposes Only*

6 2.1.1 The Settling Parties stipulate, for settlement purposes only, to  
7 the certification by the Court of a class consisting of certified home health aide  
8 / home health aide, companion care homemaker / companion care provider,  
9 companion caregiver, and caregiver – personal care assistant to all claims  
10 asserted in the Litigation.

11 2.1.2 If, for any reason, the Court does not approve this Stipulation,  
12 fails to enter the Order of Final Approval, or fails to enter the Judgment, or if  
13 this Stipulation is lawfully terminated for any other reason, the Settling  
14 Parties' stipulation to the certification of a class shall be deemed null and void  
15 *ab initio*, and Defendant shall retain the absolute right to dispute the propriety  
16 of class certification on all applicable grounds.

17 2.2 *Class Size*

18 2.2.1 Maxim has represented that as of April 2014, the class size  
19 was approximately Three Hundred Forty One (341) Class Members ("Class  
20 Size")

21 2.3 *Consideration to Settlement Class Members.*

22 2.3.1 Calculation of Settlement Payment: Each Settlement Class  
23 Member's Settlement Payment will be based on the number of Live-In Shifts  
24 Worked as a Live-In Caregiver during the applicable Class Period as follows:  
25 (*Live-In Shifts Worked x Live-In Shift Amount = Settlement Payment*). The  
26 Settlement Payment to a Qualified Claimant may be subject to increase as set  
27 forth in Section 2.6.9. Payment to Settlement Class Members may be reduced  
28 as explained in Section 2.6.3.2.

1           2.3.2     Thirty Three and a Third percent (33.3%) of the Settlement  
2     Payment to each Settlement Class Member shall be deemed payment in  
3     settlement of claims for unpaid overtime wages, premium wages, or other  
4     wages, subject to appropriate deductions and withholdings for wages. The  
5     remaining Sixty Six point Six percent (66.6)% shall be deemed payment in  
6     settlement for penalties, including PAGA penalties, and interest and will not  
7     be subject to withholdings.

8           2.3.3     As further detailed in Sections 2.4 and 2.6, and for each  
9     payment made pursuant to Sections 2.3 and 2.11, the Claims Administrator  
10    from the Qualified Settlement Fund, shall issue the Settlement Payments to  
11    eligible Qualified Claimants and Settlement Class Members and will report  
12    each payment to state and federal government authorities, including the  
13    Internal Revenue Service, as required by law.

14          2.3.4     *PAGA Penalty Payment* - Within twenty-one (21) days  
15    following the Effective Date, the Claims Administrator shall pay  
16    Two-Thousand Five-Hundred Dollars (\$2,500) from the Maximum Settlement  
17    Amount to the LWDA as its seventy-five percent (75%) share of the  
18    settlement apportioned to claims for civil penalties brought under PAGA.

19    2.4   *Taxes.*

20          2.4.1     Settlement Payments subject to required withholdings and  
21    deductions by the Claims Administrator shall be reported on Form W-2 (and  
22    such other state or local tax reporting forms as may be required by law) with  
23    respect to the year of payment as wage income to the Qualified Claimant or  
24    Settlement Class Member by the Claims Administrator on behalf of the  
25    Qualified Settlement Fund. The Claims Administrator shall issue and I.R.S.  
26    Form 1099 for the remaining payments.

27          2.4.2     Other than the withholding and reporting requirements set  
28    forth in Section 2.4.1, Qualified Claimants and Settlement Class Members

1 shall be solely responsible for the reporting and payment of the employee's  
2 share of any federal, state, and/or local income tax or other tax or any other  
3 withholdings, if any, on any of the payments made pursuant to this Section VI  
4 of this Stipulation. Defendant makes no representation, and it is understood  
5 and agreed that Defendant has made no representation, as to the taxability to  
6 any Qualified Claimants or Settlement Class Members of any portion of the  
7 Settlement Payments, the payment of any attorneys' fees and costs to Class  
8 Counsel, or the payment of any Service Payments. The Class Notice will  
9 advise each Class Member to seek his/her own personal tax advice prior to  
10 acting in response to the Class Notice, and Defendant, the Class  
11 Representatives, and Class Counsel agree that each Class Member will have an  
12 adequate opportunity to seek tax advice prior to acting in response to the Class  
13 Notice.

14 *2.5 Court Approval of Class Notice and a Settlement Hearing.*

15 2.5.1 On or around May 4, 2015, the Class Representatives, by and  
16 through his counsel of record in the Litigation, shall file this Stipulation with  
17 the Court and the Class Representatives shall move for preliminary approval  
18 of this Stipulation. Class Counsel will prepare and file the preliminary  
19 approval motion with the Court, which shall be provided to Defendant's  
20 counsel for review and comment prior to filing. In the motion for preliminary  
21 approval, the Class Representatives, through their counsel of record, will  
22 request the Court to enter the Preliminary Approval Order approving the terms  
23 of this Stipulation, certify a class and collective action for settlement purposes  
24 only as provided in Section 2.1.1, approve the sending of the Class Notice, and  
25 schedule the Final Approval Hearing for the purposes of determining the  
26 fairness of the Settlement, whether to grant Final Approval of the terms of this  
27 Stipulation, and to enter Judgment.

28 2.5.2 A decision by the Court not to enter the Preliminary Approval

1 Order in its entirety, or a decision by the Court to enter the Preliminary  
2 Approval Order with modifications (other than modifications concerning the  
3 proposed amount of any attorneys' fees or costs to be paid to Class Counsel or  
4 the amount of any Service Payments) that either of the Settling Parties  
5 determines in its reasonable and good faith judgment to be material, will be  
6 discretionary grounds for that Settling Party to terminate this Stipulation by  
7 providing written notice to the other Settling Party and the Court so stating,  
8 such notice to be filed within twenty-one (21) calendar days of receipt of the  
9 Court's decision.

10 2.5.3 If any deadlines related to this Stipulation cannot be met,  
11 Class Counsel and counsel for Defendant shall confer to reach agreement on  
12 any necessary revisions of the deadlines and timetables set forth in this  
13 Stipulation. In the event the Settling Parties fail to reach such agreement, any  
14 of the Settling Parties may apply to the Court via a noticed motion for  
15 modification of the dates and deadlines in this Stipulation, provided that such a  
16 request to the Court may seek only reasonable modifications of the dates and  
17 deadlines contained in this Stipulation and no other changes.

18 2.5.4 If the Court enters the Preliminary Approval Order, then at the  
19 resulting Final Approval Hearing, the Class Representatives and Defendant,  
20 through their counsel of record, shall address any timely written objections, if  
21 any, from Class Members (except the Class Representatives) who have not  
22 filed an Opt-Out Request Form, as well as any timely stated concerns of any  
23 federal or state official who receives a notice under the Class Action Fairness  
24 Act ("CAFA") (See Exhibit 3), if any, and any concerns of the Court, if any,  
25 and shall and hereby do, unless provided otherwise in this Stipulation,  
26 stipulate to Final Approval of this Stipulation and entry of the Judgment by the  
27 Court.  
28

1           2.6   *Notice to Class Members; Responses to the Notice.*

2           2.6.1   Within fifteen (15) business days after the Court issues the  
3 Preliminary Approval Order, Defendant shall provide to the Claims  
4 Administrator in electronic form, a list including the following information for  
5 each Class Member: each person's name, last known address, social security  
6 number, employee identification number, state(s) where employed, and the  
7 number of Live-In Shifts worked during the applicable Class Period  
8 ("Database"). The Database shall be based on Defendant's payroll, personnel,  
9 and/or other business records and provided in a format acceptable to the  
10 Claims Administrator. Defendant agrees to consult with the Claims  
11 Administrator prior to the production date to ensure the format of the list will  
12 be acceptable to the Claims Administrator. Upon production of the database,  
13 Defendant will verify that, to the best of its knowledge, the database is  
14 complete and accurate and provides all of the information required pursuant to  
15 this Stipulation and any applicable Court orders. Class Counsel may provide  
16 the Claims Administrator with any information that may assist the Claims  
17 Administrator in obtaining current contact information for any Class Member.  
18 The Claims Administrator shall maintain the Database, and all data contained  
19 within the Database, as private and confidential and shall not disclose such  
20 data to any persons or entities other than Counsel for Defendant, except that  
21 copies of Claim Forms submitted to the Claims Administrator shall be  
22 provided by the Claims Administrator to Class Counsel and Defense Counsel,  
23 and relevant information may be provided to Class Counsel to the extent  
24 necessary to address a disputed claim, and to the extent not covered above,  
25 information may be provided to Class Counsel to respond to a specific inquiry  
26 from a Class Member. The Database or information contained therein is being  
27 supplied solely for purposes of the administration of the Settlement set forth in  
28 this Stipulation and hence cannot be used by the Claims Administrator or

1 Class Counsel for any other purpose. The Settling Parties agree that the  
2 information in the Database will not be used to solicit Class Members to file  
3 any claim, charge or complaint of any kind whatsoever against Defendant or  
4 for any other purpose other than to administer the Settlement under the terms  
5 provided herein. Upon receipt of the Database, the Claims Administrator shall  
6 check with the U.S. Postal Service National Change of Address Database and  
7 update any addresses with any new information found regarding the location  
8 of Class Members.

9 2.6.2 Within fifteen (15) business days of receipt of the Database of  
10 Class Members from Defendant, the Claims Administrator will send via first  
11 class mail the Court-approved Class Notice and related Settlement Documents  
12 to each Class Member. Unless the Settling Parties agree otherwise in writing  
13 or the Court so orders, each of the Notices shall be mailed to the Last Known  
14 Addresses of the Class Members no later than the Notice Mailing Date.

15 2.6.3 Class Members may elect to become Qualified Claimants. To  
16 do so, Class Members must fully and timely complete, execute, and return, per  
17 the instructions therein, the form entitled "Claim Form" (attached to the Class  
18 Notice as Form B) within forty-five (45) calendar days from the date of  
19 mailing of the Class Notice.

20 2.6.3.1. Class Members who have submitted a Claim Form  
21 within forty-five (45) days to participate in the settlement and have  
22 become Qualified Claimants will be mailed a Settlement Payment, less  
23 any required withholdings according to the procedures set forth herein;

24 2.6.3.2. Class Members who do not file a Claim Form within the  
25 45-day period set forth above and who also do not opt-out within the  
26 45-day time period set forth in Section 2.6.4. and who are sent at least  
27 one Notice of Settlement that is not returned undeliverable, will be  
28 mailed a settlement check for their Settlement Payment amount (less

1 any required withholdings), with a notice informing them that endorsing  
2 and cashing or depositing the check will constitute consent to a release  
3 of FLSA claims in addition to the claims already being released.

4 2.6.4 Class Members, except for the Class Representatives, will  
5 have forty-five (45) calendar days from the date of mailing the Settlement  
6 Documents within which to opt-out of the Settlement set forth in this  
7 Stipulation. Class Members who wish to exercise this option must timely  
8 submit a request to opt-out. The opt-out request must be postmarked on or  
9 before forty-five (45) calendar days from the date of mailing the Settlement  
10 Documents.

11 2.6.4.1. As noted above, Class Members who do not timely  
12 submit an executed opt-out request shall be deemed part of the  
13 Settlement Class and bound by Released Claims portion of the  
14 Judgment (except for FLSA claims).

15 2.6.4.2. Class Members who cash or deposit any Settlement  
16 Payments described in Section 2.6.3.2 will also be considered to have  
17 opted-in to settlement and released his or her FLSA claims as well as the  
18 other Released Claims.

19 2.6.4.3. Class Members who timely submit an opt-out request  
20 shall have no further role with respect to the settlement set forth in this  
21 Stipulation, and for all purposes they shall be regarded as if they never  
22 were a Class Member, and thus they shall not be entitled to any payment  
23 as a result of this Stipulation and shall not be entitled to or permitted to  
24 assert an objection to this Stipulation, and shall not be deemed to release  
25 any Released Claims as set forth in Section 1.36. Class Members who  
26 timely opt-out of the settlement have no right to object to the terms of  
27 the settlement at the Final Approval hearing.

28 2.6.4.4. The Class Notice shall advise Class Members of their

1 ability to Opt-Out of this Stipulation and of the consequence thereof.  
2 Neither the Settling Parties nor any of their counsel will solicit any  
3 Class Member to submit an opt-out request.

4 2.6.4.5. To the extent a Class Member submits both a Claim  
5 Form and an opt-out request, the Claim Form will control and opt-out  
6 request will be void.

7 2.6.5 Class Members who have not filed an opt-out request will  
8 have forty-five (45) calendar days from the date of mailing the Settlement  
9 Documents within which to file an objection to the Settlement set forth in this  
10 Stipulation. No other Class Members may file an objection. To object, an  
11 individual must file a written objection and a notice of intention to appear at  
12 the Final Approval Hearing, send copies to the Claims Administrator as set  
13 forth in the Class Notice, and appear at the Final Approval Hearing. The  
14 Claims Administrator shall supply the written objections and notices of  
15 intention to appear to counsel for the Settling Parties. The Settling Parties and  
16 their counsel agree that they will not solicit, encourage, counsel or advise any  
17 individual to object to the Settlement set forth in this Stipulation.

18 2.6.6 Class Members who wish to change the name or address listed  
19 on the envelope in which the Class Notice was first mailed to them (e.g. for  
20 future reference and mailings from the Court or Claims Administrator, if any)  
21 must fully complete, execute, and mail, per the instructions therein, the form  
22 entitled "Change of Name or Address Information" (attached hereto as Form  
23 1-B). The address provided shall be deemed the "Updated Address" for any  
24 such Class Member.

25 2.6.7 Beginning two (2) weeks after the date the Settlement  
26 Documents are mailed, the Claims Administrator shall provide to Class  
27 Counsel and counsel for Defendant a weekly status report, which will be  
28 cumulative, reflecting the names and the number of Class Members who have



1 filed each of the following: completed Claim Forms, incomplete Claim  
2 Forms, untimely or incomplete Claim Forms, Claim Forms returned as  
3 undeliverable, and opt-out requests.

4 2.6.8 In the event that subsequent to the first mailing of the  
5 Settlement Documents, prior to the deadline for a response, those Settlement  
6 Documents are returned to the Claims Administrator by the United States  
7 Postal Service with a forwarding address for the recipient, the Claims  
8 Administrator shall re-mail the Settlement Documents to that address, the  
9 Settlement Documents will be deemed mailed as of that date, and the  
10 forwarding address shall be deemed the Updated Address for that Class  
11 Member. In the event that subsequent to the first mailing of Settlement  
12 Documents, and at least fourteen (14) calendar days prior to the Notice  
13 Response Deadline, those Settlement Documents are returned to the Claims  
14 Administrator by the United States Postal Service because the address of the  
15 recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender,"  
16 the Claims Administrator shall perform a standard skip trace, in the manner  
17 that the Claims Administrator customarily performs skip traces, in an effort to  
18 attempt to ascertain the current address of the particular Class Member in  
19 question. If such an address is ascertained, the Claims Administrator will  
20 re-send the Settlement Documents within ten (10) calendar days of receiving  
21 such information. The Settlement Documents shall be deemed received once  
22 it is mailed for the second time, and the Class Member shall have up to and  
23 including five (5) calendar days after the Notice Response Deadline to file a  
24 Claim Form, and file any objection as set forth in Section 2.6 above, or in the  
25 case of Class Members, to submit an Opt-Out Request Form.

26 2.6.9 Any Class Member whose address is deemed unknown after  
27 the attempts listed in 2.6.8, shall not be sent a settlement check, and the sum  
28 total of the potential Settlement Payments allocated for these Class Members

1 shall be redistributed pro rata to those Qualified Claimants who timely  
2 submitted a Claim Form.

3 2.6.10 To the extent a Class Member whose address has not been  
4 deemed unknown by the Claims Administrator has not submitted to the Claims  
5 Administrator some form of written response to the Settlement Documents by  
6 the date that is thirty (30) calendar days before the Notice Response Deadline,  
7 the Claims Administrator shall send that Class Member a reminder postcard  
8 (a) referencing the name of the Litigation; (b) stating that the Class Member  
9 received a Class Notice regarding the settlement of the Litigation; (c)  
10 providing the address for the Claims Administrator; (d) stating the Notice  
11 Response Deadline, *i.e.*, the deadline to respond to the Class Notice if the  
12 recipient desires to do so; and (e) stating that the Class Member can contact the  
13 Claims Administrator to receive an additional copy of the Settlement  
14 Documents. The postcard shall not contain additional information or  
15 statements. Nothing in this paragraph shall be construed to extend the Notice  
16 Response Deadline for any Class Member, and the reasonable costs expended  
17 in association with the preparation and mailing of the postcards contemplated  
18 by this paragraph, as well as the costs associated with any notices provided  
19 under this Stipulation, shall be included as part of the Administrative Costs as  
20 defined herein.

21 2.6.11 Nothing in this Stipulation is intended to limit Class Counsel  
22 from responding to inquiries from Class Members, or to limit the Claims  
23 Administrator from referring such inquiries to Class Counsel. The specific  
24 terms of the Claims Administrator's authorized efforts to obtain Claim Forms  
25 from the Class Members (e.g., mailing of reminder post cards, cure letters,  
26 additional notices, etc.) will be identified in an instruction sheet agreed upon  
27 by Defendant and Class Counsel.  
28

1           2.7   *Motion for Final Approval.*

2           2.7.1   Within ten (10) calendar days after the Notice Response  
3   Deadline and prior to the Final Approval Hearing described in Section 1.13,  
4   and consistent with the rules imposed by the Court, the Class Representatives  
5   shall move the Court for entry of the Order of Final Approval along with the  
6   associated entry of Judgment. The Settling Parties shall make all reasonable  
7   efforts to secure entry of the Order of Final Approval and the associated entry  
8   of Judgment. If the Court rejects this Stipulation, fails to enter the Order of  
9   Final Approval, or fails to enter the Judgment, this Stipulation shall be void *ab*  
10   *initio*, and Defendant shall have no obligations to make any payments under  
11   this Stipulation, except for payment of half of the Administrative Costs  
12   already incurred by the Claims Administrator.

13          2.8   *Funding of the Settlement Proceeds.*

14          2.8.1   Within ten (10) business days after the Effective Date,  
15   Defendant shall pay into the Qualified Settlement Fund Six Hundred Thirty  
16   Thousand Dollars (\$630,000.00).

17          2.9   *Timing of Payment to Qualified Claimants.*

18          2.9.1   Within fifteen (15) business days after Defendant has made  
19   the payment to the Qualified Settlement Fund set forth in Section 2.8.1, the  
20   Claims Administrator shall mail to each Qualified Claimant and Settlement  
21   Class Member who did not opt-out at his/her Last Known Address, or Updated  
22   Address if obtained, his/her individual Settlement Payment pursuant to  
23   Section 2.6 and in accordance with the terms of Sections 2.3.1-2.6. No  
24   Settlement Payment shall be mailed to any Settlement Class Member for  
25   whom the Claims Administrator does not have a valid address, as set forth in  
26   Section 2.6.9. The Settlement Payment to Qualified Claimants will be subject  
27   to potential increase as set forth in Section 2.6.9.

28          2.9.2   Checks issued to Qualified Claimants and Settlement Class

1 Members pursuant to this Stipulation shall remain negotiable for a period of  
2 one hundred and eighty (180) calendar days from the date of mailing. Any  
3 uncashed Settlement Payments shall thereafter be deposited to the State of  
4 California's Unclaimed Property Fund for the benefit of the Class Member. In  
5 the event that any settlement checks are returned to the Claims Administrator  
6 as non-deliverable, the Claims Administrator will, on a weekly basis, provide  
7 Class Counsel with the name of those Qualified Claimants. Class Counsel will  
8 then attempt to obtain updated contact information, and will forward that  
9 information to the Claims Administrator. If updated information is located,  
10 the Claims Administrator will reissue (or request a reissued check from the  
11 Defendant) and/or mail the settlement check to the Qualified Claimant and  
12 Settlement Class Members' updated address within one week. The reissued  
13 check shall become void if not negotiated within sixty (60) calendar days of  
14 the date of mailing and, as to any uncashed checks, the amount of that  
15 Qualified Claimant's Settlement Payment shall be sent to the State of  
16 California, Unclaimed Property Fund, for the benefit of the Class Members.

17 2.9.3 Nothing herein shall be construed to prevent the Claims  
18 Administrator or Class Counsel (through the Claims Administrator) from  
19 contacting Class Members to inform them of the expiration of their Settlement  
20 checks.

21 2.9.4 Following the mailing of the Settlement Payments to  
22 Qualified Claimants and Settlement Class Members discussed in Section  
23 2.9.1, the Claims Administrator shall provide counsel for the Settling Parties  
24 with a written confirmation of this mailing. Upon receipt of this confirmation,  
25 Class Counsel will file a notice or acknowledgement of satisfaction of the  
26 Judgment with the Court on behalf of the Settlement Class.

27 2.10 *Releases.*

28 2.10.1 Upon the effective date, the Class Representatives release any

1 and all claims, obligations, demands, actions, rights, causes of action, and  
2 liabilities against the Releasees, of whatever kind and nature, character, and  
3 description, whether in law or equity, whether sounding in tort, contract,  
4 federal, state and/or local law, statute, ordinance, regulation, common law, or  
5 other source of law or contract, whether known or unknown, and whether  
6 anticipated or unanticipated, including all unknown claims covered by  
7 California Civil Code section 1542, as quoted in Section 2.9.3 below, that  
8 could be or are asserted based on those individuals' employment by or  
9 termination from Defendant, arising at any time up to and including the  
10 Preliminary Approval Date, for any type of relief, including, without  
11 limitation, claims for minimum or overtime wages, premium pay, business  
12 expenses, other damages, penalties (including, but not limited to, waiting time  
13 penalties), liquidated damages, punitive damages, interest, attorneys' fees,  
14 litigation and other costs, expenses, restitution, and equitable and declaratory  
15 relief. The Class Representatives Claims include, but are not limited to, the  
16 Released Claims, as well as any other claims under any provision of the FLSA,  
17 the California Labor Code, including Section 2698, *et seq.*, any applicable  
18 California Industrial Welfare Commission Wage Order, or any city or county  
19 Living Wage Ordinances, the Fair Credit Reporting Act, and claims under  
20 state or federal discrimination statutes, including, without limitation, the  
21 California Fair Employment and Housing Act, California Government Code §  
22 12940 *et seq.*; the Unruh Civil Rights Act, California Civil Code § 51 *et seq.*;  
23 the California Constitution; the California Business and Professions Code;  
24 Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Family  
25 and Medical Leave Act; the Americans with Disabilities Act, 42 U.S.C. §  
26 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29  
27 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and  
28 interpretive guidelines (“Class Representatives Released Claims”).

1           2.10.2   Upon the Effective Date, the Qualified Claimants and  
2   Settlement Class Members on behalf of themselves and each of their heirs,  
3   representatives, successors, assigns, and attorneys, shall be deemed to have,  
4   and by operation of the Judgment shall have, fully, finally, and forever  
5   released, dismissed, with prejudice, relinquished, and discharged all Released  
6   Claims as defined in Section 1.36 herein, including, as to all Qualified  
7   Claimants and those Settlement Class Members who cash or deposit their  
8   Settlement Payments, claims under the FLSA.

9           2.10.3   With respect to the Class Representatives Released Claims,  
10   the Class Representatives shall be deemed to have expressly waived and  
11   relinquished, to the fullest extent permitted by law, the provisions, rights, and  
12   benefits they may otherwise have had pursuant to Section 1542 of the  
13   California Civil Code, which provides as follows:

14           A general release does not extend to claims which the  
15           creditor does not know or suspect to exist in his or her  
16           favor at the time of executing the release, which if known  
          to him or her must have materially affected his or her  
          settlement with the debtor.

17           2.10.4   The above releases given are conditional and shall only take  
18   effect unconditionally upon the Effective Date.

19   2.11   *Payment of Attorneys' Fees and Costs and Service Payment.*

20           2.11.1   Not more than twenty-seven (27) calendar days in advance of  
21   the Final Approval Hearing, and subject to Court approval, Class Counsel  
22   shall apply to the Court for an award of reasonable attorneys' fees not to  
23   exceed Two Hundred Ten Thousand Dollars (\$210,000.00) of the Maximum  
24   Settlement Amount and costs incurred in litigating this matter. All attorneys'  
25   fees and costs shall be obtained solely from the Qualified Settlement Fund as  
26   an amount included within the Maximum Settlement Amount. Defendant will  
27   not oppose Class Counsel's request for attorneys' fees and costs. Any  
28   Court-approved payments made pursuant to this paragraph shall constitute full

1 satisfaction of any claim for attorneys' fees or costs related to the Litigation or  
2 this Stipulation, and the Class Representatives and Class Counsel, on behalf of  
3 themselves and all Settlement Class Members, agree that they shall neither  
4 seek nor be entitled to any additional attorneys' fees or costs under any theory.  
5 The Class Representatives and Class Counsel agree that they shall be  
6 responsible for justifying the amount of the attorneys' fees and costs payment  
7 to the Court, and they agree to submit, as appropriate, the necessary materials  
8 to justify this payment along with the Settling Parties' Joint Motion for Final  
9 Approval of this Stipulation pursuant to Section 2.7.1.

10 2.11.2 The Service Payment will, subject to Court approval, be paid  
11 by the Claims Administrator in an amount not to exceed Ten Thousand Dollars  
12 (\$10,000.00) for Kurt Casadine and in an amount of Two Thousand Dollars  
13 (\$2,000.00) for Alfred Guerrero for service and assistance to the Class. The  
14 Service Payments shall be obtained from the Maximum Settlement Amount.  
15 The Service Payments will be subject to all applicable deductions and  
16 withholdings. The Claims Administrator shall cause any amount of the  
17 Service Payment that is not awarded by the Court to revert to the Net  
18 Settlement Amount.

19 2.11.3 In the event the Court (or any appellate court) awards less than  
20 the amount requested for attorneys' fees and/or costs, or less than the amount  
21 requested for the Enhancement Award for the Class Representatives, only the  
22 awarded amounts shall be paid and shall constitute satisfaction of the  
23 obligations of this paragraph and full payment hereunder. Any remaining or  
24 unawarded portion of the requested attorneys' fees, costs, and/or Service  
25 Payment shall revert to the Net Settlement Amount.

26 2.11.4 Other than any reporting of the payment of attorneys' fees and  
27 costs and Service Payments as required by this Stipulation or by law (which  
28 will be made by the Claims Administrator on behalf of the Qualified

1 Settlement Fund), Class Counsel and the Class Representatives shall alone be  
2 responsible for the reporting and payment of any federal, state, and/or local  
3 income or other form of tax on any payment that they have received pursuant  
4 to this paragraph and all of its subparts. Class Counsel agrees to pay and  
5 indemnify and hold Defendant and the Qualified Settlement Fund harmless for  
6 any taxes due or owing by them related to attorneys' fees and costs paid by  
7 Defendant to Class Counsel pursuant to this Stipulation and for any required  
8 reporting under federal, state, and/or local law. The Settling Parties shall agree  
9 on Service Payments, if any, to be offered to any other Settlement Class  
10 Members, the amount of such payments, and any conditions under which such  
11 payments will be paid. Any Service Payments agreed to under this provision  
12 shall be paid after the Effective Date by the Claims Administrator in  
13 conjunction with the other Settlement Payments.

14 2.11.5 Defendant shall report the Service Payments as non-wage  
15 income in the year of payment consistent with Section 2.11.2 above.

16 2.12 *Claims Administrator.*

17 2.12.1 The Claims Administrator shall be paid for any  
18 Administrative Costs reasonably incurred by the Claims Administrator as a  
19 result of procedures and processes expressly required by this Stipulation,  
20 including with the administration of the Qualified Settlement Fund, out of the  
21 Maximum Settlement Amount as defined in Section 1.22.

22 2.12.2 Absent any agreement, either Class Counsel or Defendant  
23 may communicate with the Claims Administrator with or without notice  
24 and/or copies to Class Counsel, except that notice will be provided if a  
25 question pertains to both parties or a dispute arises that Defendant cannot  
26 resolve.

27 2.12.3 In the event that either Defendant or Class Counsel take the  
28 position that the Claims Administrator is not acting in accordance with the



1 terms of this Stipulation, such party shall meet and confer with opposing  
2 counsel prior to raising any such issue with the Claims Administrator or the  
3 Court.

4 2.13 *Termination of Settlement.*

5 2.13.1 In the event this Stipulation is not approved in its entirety as is  
6 by the Court, excluding modifications that Defendant determines in its  
7 reasonable and good faith judgment to not be material modifications, or in the  
8 event that the Settlement set forth in this Stipulation is terminated, cancelled,  
9 declared void, or fails to become effective in accordance with its terms, or if  
10 the Judgment does not become a Final Judgment, or if the Effective Date does  
11 not occur, no payments shall be made by Defendant to anyone, including the  
12 Qualified Settlement Fund, in accordance with the terms of this Stipulation,  
13 and the Settling Parties will each bear their own costs and fees with regard to  
14 the efforts to obtain Court approval. In such event, this Stipulation (except for  
15 those provisions relating to non-admissibility and non-admission of liability  
16 set forth in Sections I, IV, 2.14.5, and 2.14.6 and those provisions relating to  
17 the return of documents and discovery set forth in 2.14) shall be deemed null  
18 and void, its terms and provisions shall have no further force and effect with  
19 respect to the Settling Parties and shall not be used in the Litigation or in any  
20 other proceeding for any purpose, and any Judgment or order entered by the  
21 Court in accordance with the terms of this Stipulation shall be treated as  
22 vacated, *nunc pro tunc*. Notwithstanding any other provision of this  
23 Stipulation, no order of the Court, or modification or reversal on appeal of any  
24 order of the Court, reducing the amount of any attorneys' fees or costs to be  
25 paid by Defendant to Class Counsel, or reducing the amount of any Service  
26 Payments paid to the Class Representatives, shall constitute grounds for  
27 cancellation or termination of this Stipulation or grounds for limiting any other  
28 provision of the Judgment.

1           2.13.2 Defendant shall have the absolute discretionary right to  
2 terminate this Settlement and the terms set forth in this Stipulation in the event  
3 that any of the following conditions occur in 2.13.2.1 through 2.13.2.4.

4           2.13.2.1. In the event that this Stipulation is construed in such a  
5 fashion that would require Defendant to pay: (i) more than the  
6 Maximum Settlement Amount; (ii) any amount(s) not expressly  
7 provided for in Section VI of this Stipulation;

8           2.13.2.2. In the event that the Court does not certify, for  
9 settlement purposes only, a class action and collective action consistent  
10 with Section 2.1.1, or otherwise makes an order materially inconsistent  
11 with any of the terms of this Stipulation or the Settlement Documents  
12 prepared to effectuate the Settlement;

13           2.13.2.3. In the event that any other court, prior to the Court's  
14 Order of Final Approval, whether on a conditional basis or not, certifies  
15 a class or collective action that involves any claim, whether based on  
16 statute, regulation, contract, common law, or otherwise, included in the  
17 Released Claims, as those terms are defined in Sections 1.36 herein.  
18 However, the Parties agree to cooperate to oppose any attempted effort  
19 by any individual to obtain conditional or class certification covering  
20 any of the Class Members who are the subject of this Stipulation;

21           2.13.2.4. In the event that any Class Representatives or Class  
22 Counsel breaches this Stipulation.

23           2.13.3 To the extent Defendant chooses to exercise the right to  
24 terminate this Stipulation established in Section 2.13.2. and its subsections, it  
25 must do so through written notice to Class Counsel prior to the Order of Final  
26 Approval and within twenty-one (21) calendar days of Defendant learning of  
27 the occurrence of the operative condition warranting termination.

28           2.13.4 In the event the Settlement set forth in this Stipulation is

1 terminated, cancelled, declared void, or fails to become effective in  
2 accordance with its terms, or if the Judgment does not become a Final  
3 Judgment, or if the Effective Date does not occur, notwithstanding any of the  
4 provisions of this Section 2.13 and all its subsections, the Litigation may  
5 proceed without prejudice as if this settlement had not been entered.  
6 Furthermore, in any such event, if the class and/or collective action described  
7 in Section 2.1 has already been certified for settlement purposes, the Settling  
8 Parties will jointly move, as soon as practicable, to decertify without prejudice  
9 the class actions that were certified as part of this Stipulation.

10 2.14 *Miscellaneous Provisions.*

11 2.14.1 The only Class Members entitled to any Settlement Payment  
12 under this Stipulation and the associated Judgment are Qualified Claimants  
13 and Settlement Class Members and they shall be entitled to their individual  
14 Settlement Payments pursuant to Section 2.3 only.

15 2.14.2 Defendant's sole obligations to Class Counsel and the Claims  
16 Administrator are set forth in this Stipulation. Class Counsel and the Claims  
17 Administrator shall not seek to recover any fees or costs awarded in excess of  
18 the terms in this Stipulation.

19 2.14.3 The Settling Parties (a) acknowledge it is their intent to  
20 consummate this Stipulation; and (b) agree to cooperate to the extent  
21 reasonably necessary to effectuate and implement all terms and conditions of  
22 this Stipulation and to exercise their best efforts to accomplish the foregoing  
23 terms and conditions of this Stipulation.

24 2.14.4 The Class Representatives and Class Counsel represent and  
25 acknowledge that they have no other litigation, arbitration and/or  
26 administration actions filed and/or pending against Maxim. They further  
27 agree that they will not file or assist with any litigation pertaining to the subject  
28 matter alleged in the Second and (proposed) Third Amended Complaint.

1           2.14.5 This Stipulation compromises claims which are contested in  
2 good faith, and it shall not be deemed an admission by any of the Settling  
3 Parties as to the merits of any claim or any potential defense. The Settling  
4 Parties agree that the amounts paid in connection with this Stipulation and the  
5 other terms of the settlement were negotiated in good faith by the Settling  
6 Parties, and reflect a Settlement that was reached voluntarily after consultation  
7 with competent legal counsel.

8           2.14.6 Defendant specifically and generally denies any and all  
9 liability or wrongdoing of any sort with regard to any of the claims asserted in  
10 the Litigation and makes no concessions or admissions of liability of any sort.  
11 Neither this Stipulation nor the Settlement, nor any act performed or document  
12 executed pursuant to, or in furtherance of, this Stipulation or the Settlement:  
13 (a) is or may be deemed to be or may be used as an admission of, or evidence  
14 of, the validity of any Released Claims, or of any wrongdoing or liability of the  
15 Defendant Releasees, or the waiver of any defenses by Defendant for any  
16 purpose, or any of them; or (b) is or may be deemed to be or may be used as an  
17 admission of, or evidence of, any fault or omission of the Defendant  
18 Releasees, or any of them, in any civil, criminal or administrative proceeding  
19 in any court, administrative agency, or other tribunal for any reason.

20           2.14.7 All of the exhibits to this Stipulation are material and integral  
21 parts hereof and are fully incorporated herein by this reference.

22           2.14.8 This Stipulation may be amended or modified only by a  
23 written instrument signed by authorized representatives of all Settling Parties  
24 or their respective successors-in-interest.

25           2.14.9 This Stipulation constitutes the entire agreement among the  
26 Settling Parties hereto regarding the subject matter discussed herein, and no  
27 representations, warranties, or inducements have been made to any party  
28 concerning this Stipulation or its exhibits other than the representations,

1 warranties, and covenants contained and memorialized in such documents.  
2 Except as otherwise explicitly provided herein, each Settling Party shall bear  
3 its own fees and costs.

4 2.14.10 Class Counsel, on behalf of the Class Members, represent that,  
5 after consultation with and approval by the Class Representatives, they are  
6 expressly authorized by the Class Representatives to take all appropriate  
7 action required or permitted to be taken by the Class Representatives pursuant  
8 to this Stipulation to effect its terms, and also are expressly authorized to enter  
9 into any modifications or amendments to this Stipulation on behalf of the  
10 Class Members which they deem appropriate. Similarly, Defendant's counsel  
11 represents that it is expressly authorized to take all appropriate action required  
12 or permitted to be taken by Defendant pursuant to this Stipulation to effect its  
13 terms, and also are expressly authorized to enter into any modifications or  
14 amendments to this Stipulation on behalf of Defendant which they deem  
15 appropriate.

16 2.14.11 Each counsel or other person executing this Stipulation or any  
17 of its exhibits on behalf of any Party hereto hereby warrants that such person  
18 has the full authority to do so.

19 2.14.12 This Stipulation may be executed in one or more counterparts.  
20 All executed counterparts and each of them shall be deemed to be one and the  
21 same instrument. A complete set of executed counterparts shall be filed with  
22 the Court.

23 2.14.13 Whenever this Stipulation requires or contemplates that one  
24 Party, the Court or the Claims Administrator shall or may give notice to  
25 another, notice shall be provided by facsimile and/or next-day (excluding  
26 Sundays and Court holidays) express delivery service as follows:

27 (i) If to Defendant, then to:  
28

1 MORGAN LEWIS & BOCKIUS LLP  
2 John Battenfeld  
3 300 South Grand Avenue  
4 Twenty-Second Floor  
5 Los Angeles, California 90071-3132  
6 Fax: 213.612.2501

7 MORGAN LEWIS & BOCKIUS LLP  
8 Shannon Bettis Nakabayashi  
9 One Market, Spear Street Tower  
10 San Francisco, California 94105-1596  
11 Fax: 415.442.1001

12 (ii) If to Class Representative, then to:

13 MAHONEY LAW GROUP, APC  
14 Kevin Mahoney  
15 Sean Blakely  
16 249 E. Ocean Blvd., Suite 814  
17 Long Beach, California 90802  
18 Fax: (562) 590-8400

19 2.14.14 This Stipulation shall be binding upon and inure to the benefit  
20 of the Parties hereto and their respective heirs, trustees, executors,  
21 administrators, successors, and assigns; but this Stipulation is not designed to  
22 and does not create any third party beneficiaries, either express or implied.

23 2.14.15 The Court shall retain jurisdiction with respect to the  
24 implementation and enforcement of the terms of this Stipulation, and all  
25 Parties hereto submit to the jurisdiction of the Court for purposes of  
26 implementing and enforcing the Settlement embodied in this Stipulation,  
27 including the Court's continuing jurisdiction over the Qualified Settlement  
28 Fund within the meaning of Treas. Reg. §1.468B-1, et. seq. Any action to  
enforce this Stipulation shall be commenced and maintained only in the Court.

2.14.16 The Settling Parties agree and understand that there shall be  
no injunctive relief included as part of any Court Order as to them.

2.14.17 This Stipulation and the exhibits hereto shall be considered to  
have been negotiated, executed, and delivered, and to have been wholly  
performed, in the State of California, and the rights and obligations of the

1 parties to this Stipulation shall be construed and enforced in accordance with,  
2 and governed by, the substantive laws of the State of California without giving  
3 effect to that State's choice of law principles.

4 2.14.18 The language of all parts of this Stipulation shall in all cases  
5 be construed as a whole, according to its fair meaning, and not strictly for or  
6 against either Party. No Party shall be deemed the drafter of this Stipulation.  
7 The parties acknowledge that the terms of this Stipulation are contractual and  
8 are the product of arms-length negotiations between the parties and their  
9 counsel. Each Party and their counsel cooperated in the drafting and  
10 preparation of this Stipulation. In any construction to be made of this  
11 Stipulation, this Stipulation shall not be construed against any party and the  
12 canon of contract interpretation set forth in California Civil Code §1654 shall  
13 not be applied.

14 2.14.19 Other than necessary disclosures made to a court, the Class  
15 Representatives, Defendant, and their respective counsel and other agents  
16 agree to keep the fact of Settlement, this Stipulation and any attached  
17 documents, and their Settlement negotiations confidential and will not disclose  
18 that information to any third party (including the press or inclusion on any  
19 websites) until such time as the Class Representative and Defendant move for  
20 preliminary approval of this Stipulation or otherwise agree in writing.

21 2.14.20 After the Court enters a Preliminary Approval Order, the  
22 Class Representatives, Class Counsel and their agents may communicate with  
23 Class Members provided that such communications are accessible only to  
24 Class Members; however, they shall issue no statements to the press, any other  
25 media, or to any third party regarding this Settlement or this Stipulation,  
26 including but not limited to communications on web sites or other social  
27 media. Class Counsel may make a general statement about the settlement on  
28 its website that does not identify Maxim by name or identify this case by court

1 and case number.

2 2.14.21 The Class Representatives, by signing this Stipulation, is  
3 bound by the terms herein and further agrees not to request to be excluded  
4 from the Settlement and not to object to any terms of this Stipulation. Any  
5 such request for exclusion or objection shall therefore be void and of no force  
6 or effect. Defendant, Class Counsel, and the Class Representatives waive their  
7 rights to file an appeal, writ, or any challenge whatsoever to the terms of this  
8 Stipulation, except that Class Representatives and Class Counsel have the  
9 right to appeal any order denying, in whole or in part, an application for the  
10 award of attorney's fees and costs and/or an Enhancement Award.

11 2.14.22 Neither Class Counsel nor any other attorneys acting for, or  
12 purporting to act for, the Class Representatives or the Class, may recover or  
13 seek to recover any amounts for attorneys' fees, costs, or other disbursements  
14 from the Maximum Settlement Amount or otherwise from the Defendant  
15 Releasees except as expressly provided herein.

16 2.14.23 This Stipulation may not be changed, altered, or modified,  
17 except in writing signed by the Parties hereto and approved by the Court. This  
18 Stipulation may not be discharged except by performance in accordance with  
19 its terms or by a writing used by the Parties hereto.

20 2.14.24 Because the proposed Class has not yet been certified, and the  
21 members of the proposed Class are so numerous, the Parties agree that it is  
22 impossible or impractical to have each Class Member sign this Stipulation. It  
23 is agreed that, for purposes of seeking approval of the Class Settlement, this  
24 Stipulation may be executed on behalf of the proposed Class by the Class  
25 Representatives and Class Counsel.

26 2.14.25 Paragraph titles or captions contained in this Stipulation are  
27 inserted as a matter of convenience and for reference, and in no way define,  
28 limit, extend, or describe the scope of this Stipulation, or any provision



1 thereof.


2 2.15 *Return of All Documents and Other Discovery.*

3 2.15.1 No discovery materials shall be disseminated or distributed to  
4 any person or entity by any Class Representatives or Class Counsel. All  
5 originals or reproductions of any discovery materials obtained from Defendant  
6 and/or given to any party, expert, consultant, or other person shall be retrieved  
7 by Class Counsel and destroyed, and Class Counsel shall certify within thirty  
8 (30) calendar days of the Effective Date that they have destroyed all such  
9 documents or information and all copies thereof.


10 2.15.2 This provision and the provisions of Section 2.15.1 are not  
11 intended to cover work product produced by Class Counsel, but are intended to  
12 cover any documents or other materials described herein that are attached to  
13 any work product and all such documents or materials attached to work  
14 product shall be destroyed as set forth above. All such documents,  
15 information or materials incorporated into any work product shall be excised  
16 as well.

17 IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to  
18 be executed.

19 Executed this 4<sup>th</sup> day of May, 2015 by:

20  
21   
22 KURT CASADINE

23 Executed this 5th day of May, 2015 by:

24  
25   
26 ALFRED GUERRERO  
27 Digitally signed by Alfred  
Guerrero  
DN: cn=Alfred Guerrero, o=no,  
email=alfred@guerreroallegado  
m.com  
Date: 2015.05.05 10:07:55  
07:00

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1 Dated: May 7, 2015

Approved as to form and substance:

2  
3  
4 /s/ Sean M. Blakely

5 MAHONEY LAW GROUP, APC

6 Sean M. Blakely

7  
8 Attorneys for Class Representative and  
Class Members

9 Dated: May 7, 2015

Approved as to form and substance:

10  
11  
12 /s/ Jose R. Garay

13 JOSE GARAY, APLC

14 Jose R. Garay

15  
16 Attorneys for Class Representatives and  
Class Members

17 Dated: May 7, 2015

Approved as to form and substance:

18  
19  
20 /s/ John S. Battenfeld

21 MORGAN, LEWIS & BOCKIUS LLP

22 John S. Battenfeld

23  
24 Attorneys for Defendant