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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FRANCISCA MATA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

MARUKAI CORPORATION., a Hawaii
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV00959
Consolidated with Case No.: 20STCV13862

[Hon. Yvette M Palazuelos, Dept. 9]

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' UNOPPOSED MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL'S
ACT OF 2004**

Date: May 5, 2022
Time: 10:00 a.m.
Courtroom: SSC-9
Judge: Hon. Yvette M Palazuelos

Action Filed: January 9, 2020
Trial Date: Not Set

CRISTINA MARTINEZ,

Plaintiff,

vs.

MARUKAI CORPORATION, et al.,

Defendants.

Case No. 20STCV13862
Consolidated with Lead Case No.:
20STCV00959

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiffs FRANCISCO MATA and CRISTINA MARTINEZ (“Plaintiffs”) and Defendant
3 MARUKAI CORPORATION (“Defendant”) (Plaintiffs and Defendant are the “Parties”) have reached
4 terms of settlement of this action alleging a claim for relief pursuant to the Labor Code Private Attorneys
5 General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”).

6 Pursuant to PAGA, Plaintiffs, on behalf of the Parties, have filed a motion for approval of the
7 settlement of the claims asserted against Defendant in this action. Specifically, Plaintiffs move for an
8 order:

9 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
10 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
11 settlement; the amount of distributions to the State and Aggrieved Employees; the amounts
12 allocated to attorney’s fees and costs; the amounts requested for enhancement awards; and, the
13 amount allocated to the settlement administrator; and,

14 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
15 Agreement.

16 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
17 RELEASE (referred to as the “Agreement,” or “Settlement,” and attached to the Declaration of H. Scott
18 Leviant as Exhibit 1) is conditioned upon the Court’s approval. Capitalized terms in this Order have the
19 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the Settlement
20 is as follows:

- 21 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
22 “PAGA Members”) are: “All non-exempt employees who are or were employed
23 by Defendant within the State of California between January 6, 2019 and March
24 29, 2022 or the date when the total number of pay periods exceeds 58,265 by
25 more than 10%, whichever occurs sooner.” It is estimated that there are
26 approximately 58,265 pay periods. (Agreement, at 2, and ¶ 8.)
- 27 (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 6.)
- 28 (c) Maximum Settlement Amount: Defendant agrees to pay the maximum sum of

\$873,975.00 (hereinafter referred to as the “Maximum Settlement Amount” or “MSA”) for settlement of the PAGA Penalties, which shall be inclusive of Plaintiffs’ Counsel attorney’s fees and costs, a general release payment to Plaintiffs, and the settlement administrator’s fees and costs. (Agreement, ¶ 6.)

(d) Net Settlement Amount: At least **\$521,208.89** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$390,906.67** under the Agreement, and Aggrieved Employees will receive at least **\$130,302.22**. (Agreement, ¶ 6.d.)

(e) Attorney’s Fees: Plaintiffs’ Counsel request an award of attorney’s fees in the amount of **\$305,891.25**, with \$168,240.19 (55%) awarded to Moon & Yang, APC, and \$137,651.06 (45%) awarded to Haines Law Group, APC. (Agreement, ¶ 6.a; Leviant Decl., ¶ 17.)¹ The requested fee is 35% of the MSA.

(f) Litigation Costs: Plaintiffs’ Counsel seek reimbursement of costs, to a maximum amount of \$25,000. Those costs are \$9,964.98 for Moon & Yang, APC, and \$7,019.88 for Haines Law Group, APC, for a total of **\$16,984.86**. (Agreement, ¶¶ 6.b; Leviant Decl., ¶ 38 and Exh. 2; Haines Decl., ¶ 16 and Exh. 2.)

(g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Administrator duties for a flat fee not to exceed **\$14,890.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 13; Leviant Decl., ¶ 39 and Exh. 3.)

(h) General Release Payments to Plaintiffs: Plaintiffs request approval of an allocation of \$7,500.00 to each Plaintiff from the MSA (for a total of \$15,000.00) for their general releases of all potential claims against Defendant and for their

¹ Moon & Yang, APC, and Haines Law Group, APC, have entered into a written fee-sharing agreement that was approved and signed by their respective clients. Under that agreement, Moon & Yang, APC, is to receive 55% of the fees awarded and Haines Law Group, APC, is to receive 45% of the fees awarded.

efforts in bringing and prosecuting these Actions. (Agreement, ¶ 6.c.)

(i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund or like fund. (Agreement, ¶ 11.c.)

(j) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from the LWDA and each and every Aggrieved Employee, including Plaintiffs.² (Agreement, ¶ 2; Leviant Decl., Exh. 1.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All non-exempt employees who are or were employed by Defendant within the State of California between January 6, 2019 and April 15, 2022.

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendant's potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further

² This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of
2 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged
3 violations.

4 4. The Court hereby approves ILYM Group, Inc. to serve as the Administrator. The
5 Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested
6 amount of **\$14,890.00** out of the Settlement Sum to effectuate Administration.

7 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
8 **\$873,975.00**, less administration costs, attorney's fees, general release payments to Plaintiffs
9 FRANCISCO MATA and CRISTINA MARTINEZ and costs awarded to Plaintiffs' counsel. After
10 awards, the amount remaining to distribute as penalties is **\$521,208.89**. The LWDA shall receive 75%
11 of the penalties allocated, which is **\$390,906.67**. Aggrieved Employees shall receive 25% of the
12 penalties allocated, which is **\$130,302.22**.

13 6. The Court hereby awards Counsel attorneys' fees in the amount of **\$305,891.25**, which is
14 thirty-five percent of the settlement fund. Of that amount, **\$168,240.19** (55%) is awarded to Moon &
15 Yang, APC, and **\$137,651.06** (45%) awarded to Haines Law Group, APC, pursuant to a disclosed fee
16 sharing agreement. The Court finds that the attorneys' fees are reasonable compared to amounts
17 routinely approved in similar settlements and as guided by the California Supreme Court's decision
18 concerning the awarding of fees from monetary funds for class members. *Laffitte v. Robert Half Intern.*
19 *Inc.*, 1 Cal. 5th 480, 503 (2016). Counsel proceeded on a contingency basis despite the uncertainty of
20 any fee award. Counsel were necessarily precluded from pursuing other potential sources of fees
21 because of work in connection with this Action. The Court observed that this is not a class action. It is
22 more akin to contingent representation with an additional requirement of Court review due to the qui tam
23 nature of a PAGA claim. Attorneys' fees that are fifty percent of a common fund are typically
24 considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement
25 is relatively small. *See Van Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995)
26 (stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under
27 \$10 million). Based on these considerations, including the lodestar cross-check, a fee award of thirty-
28 five percent of the total settlement amount is reasonable.

1 7. The Court hereby awards Counsel litigation costs in the total amount of \$16,984.86. Of
2 that amount, **\$9,964.98** is awarded to Moon & Yang, APC, and **\$7,019.88** is awarded to Haines Law
3 Group, APC.

4 8. The Court approves payments to Plaintiffs FRANCISCO MATA and CRISTINA
5 MARTINEZ in the amounts of **\$7,500.00 each** (for a total of **\$15,000.00**), as consideration for their
6 general releases and as Enhancement Awards.

7 9. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
8 the provisions and timelines set forth in the Agreement.

9 10. Pursuant to the terms of the Settlement, the released persons and entities include
10 Defendants (as defined above) and Defendant's past, present and future owners, shareholders, members,
11 parent corporations or entities, sister corporations or entities, related and/or affiliated entities,
12 subsidiaries, divisions, investors, partners, general partners, limited partners, directors, officers,
13 employees, managers, supervisors, assigns, heirs, beneficiaries, predecessors, successors, attorneys,
14 agents, and representatives, and all others related to them, and each of them (referred to in the Settlement
15 as the "Released Parties").

16 11. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA
17 claims are released as follows:

18 The Parties agree and acknowledge that, to the maximum extent permitted by law, the
19 final judgment entered pursuant to this settlement will bind all those who would be
20 bound by a judgment if the action had been brought by the LWDA, including Plaintiffs,
21 the LWDA, and the Allegedly Aggrieved Employees, with respect to the recovery of
22 civil penalties under the California Private Attorneys General Act, California Labor
23 Code § 2698, *et. seq.* only, against Defendant and the "Released Parties". It is expressly
24 understood and agreed that this Settlement includes a full release of the PAGA claim
25 for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 510,
26 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698,
27 2802, as well as the applicable provisions of the Industrial Wage Orders, and for any
28 other PAGA violations that have been asserted and/or reasonably could have been
asserted based upon the facts alleged in Plaintiffs' Complaints and/or PAGA Notices,
attached as **Exhibit A** [to the Settlement] (all of the foregoing are collectively referred
to as the "PAGA Released Claims"). Effective upon the Effective Date and Defendant's
remittance of the Maximum Settlement Amount to the Settlement Administrator,
Plaintiffs, the State of California, and all Allegedly Aggrieved Employees shall be
deemed to have, and by operation of the Judgment shall have, expressly released,
waived, and discharged the Released parties from the PAGA Released Claims, and they
shall be bound by the Judgment and be forever barred from pursuing any of the PAGA
Released Claims against any of the Released Parties. With the exception of Plaintiffs,
this settlement shall not impact Allegedly Aggrieved Employees' ability to assert

individual Labor Code claims other than PAGA claims.³

12. The action is DISMISSED WITH PREJUDICE.

13. The Court will enter Final Judgment in accordance with this Order.

14. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto.

IT IS SO ORDERED.

Dated: _____

Hon. Yvette M Palazuelos
LOS ANGELES SUPERIOR COURT JUDGE

³ The effective date ("Effective Date") of the Agreement shall mean the date the Court's judgment in these Lawsuits become final ("Judgment"). For purposes of this Agreement, the Judgment becomes final upon: (a) the date of the notice of entry of the Judgment is served, and (b) the later of (1) the last day on which any appeal might be filed with respect to the Judgment; or (2) the date of successful resolution of any appeal(s), including expiration of any time to seek reconsideration of further review.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

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☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **April 13, 2022** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature