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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]

CLASS ACTION

**DECLARATION OF H. SCOTT LEVIANT
IN SUPPORT OF 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

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DECLARATION OF H. SCOTT LEVIANT

I, H. Scott Leviant, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States Supreme Court, the Eighth Circuit Court of Appeals, the Ninth Circuit Court of Appeals, and the United States District Courts for the Central, Eastern, Northern and Southern Districts of California. I have never been subject to discipline by the State Bar of California. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true.

2. I am employed as a Senior Counsel at the law firm of Moon & Yang, APC. My business address is 1055 W. 7th Street, Suite 1880, Los Angeles, California 90017 and my business telephone number is (213) 232-3128. I am counsel for Plaintiff Francisca Mata in this action.

3. This Declaration is submitted in support of Plaintiffs' UNOPPOSED MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004.

BACKGROUND

4. Plaintiffs allege that Defendant engaged in practices and procedures that violated the California Labor Code. These alleged statutory violations subject Defendant to potential liability for PAGA penalties pursuant to Labor Code § 2698. Through this action, Plaintiffs seek to recover penalties pursuant to Labor Code § 2698, *et. seq.*

5. Defendant operates retail markets specializing in Japanese goods.

6. For purposes of this settlement, Defendant employed individuals in non-exempt positions in California.

7. Plaintiffs worked for Defendant in California during the PAGA Period.

8. Defendant contends it had lawful policies, including break and pay policies, in effect

1 throughout the statutory period, and viable legal defenses to a substantial portion of the alleged penalty
2 claims.

3 9. On January 6, 2020, Plaintiff MATA's Counsel sent a letter to the LWDA on behalf of
4 Plaintiff MATA, in compliance with California Labor Code § 2699.3.

5 10. More than 65 days passed after the letter was sent to the LWDA, and the LWDA did not
6 indicate that it intended to investigate the alleged violations referenced in the letter sent by Mata.

7 11. On January 9, 2020, Plaintiff MATA filed a class action complaint ("Complaint") in the
8 Superior Court of California, Los Angeles County entitled *Mata v. Marukai Corporation*, Case No.
9 20STCV00595 (the "Lawsuit" or "*Mata*"). On or about March 16, 2020, Plaintiff MATA filed his First
10 Amended Complaint adding a case of action for civil penalties under PAGA. Due to an enforceable
11 arbitration agreement, Plaintiff requested dismissal of causes of action one through eight, leaving only
12 the PAGA claim. On October 16, 2020, the Court issued an Order relating *Mata* to the matter entitled
13 *Martinez v. Marukai Corporation*, Case No. 20STCV13862 ("*Martinez*"). *Martinez* and *Mata* were later
14 consolidated. *Martinez* and *Mata* are substantially similar in their allegations.

15 12. Defendant denies all liability and admits to no claim by virtue of its agreement to settle.

16 13. Because Court approval of a PAGA settlement is required, this settlement is presented to
17 this Court for review and approval.

18 14. Counsel for Plaintiffs have thoroughly investigated the facts relating to the claims alleged
19 in the operative complaint and have made a thorough study of the legal principles applicable to the
20 claims asserted against Defendant. Based on their investigation and evaluation of this case, Plaintiffs'
21 Counsel have concluded that the settlement is fair, reasonable, and adequate in light of all known facts
22 and circumstances, including the defenses asserted by Defendant, potential adverse findings regarding
23 liability, and numerous potential appellate issues.

24 15. The Parties agreed to participate in a mediation in an effort to resolve the PAGA claims
25 asserted in this matter. The Parties selected mediator Jeffrey A. Ross, Esq., a neutral with extensive
26 experience mediating wage and hour class and representative actions. Prior to the mediation, Plaintiffs
27 requested substantial data from Defendant, and Defendant provided requested data.

28 16. The Parties participated in a full-day mediation on January 18, 2022, reaching a

1 settlement at that time. The Parties then spent many weeks thereafter negotiating the detailed terms of
2 the Settlement memorialized in a long-form agreement to resolve this matter.

3
4 SUMMARY OF THE SETTLEMENT TERMS

5 17. Key provisions of the proposed settlement include the following:

- 6 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
7 “PAGA Members”) are: “All non-exempt employees who are or were employed
8 by Defendant within the State of California between January 6, 2019 and April
9 15, 2022 or the date when the total number of pay periods exceeds 58,265 by
10 more than 15%, whichever occurs sooner.” It is estimated that there are
11 approximately 58,265 pay periods. (Agreement, at 2, and ¶ 8.)
- 12 (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 6.)
- 13 (c) Maximum Settlement Amount: Defendant agrees to pay the maximum sum of
14 **\$873,975.00** (hereinafter referred to as the “Maximum Settlement Amount” or
15 “MSA”) for settlement of the PAGA Penalties, which shall be inclusive of
16 Plaintiffs’ Counsel attorney’s fees and costs, a general release payment to
17 Plaintiffs, and the settlement administrator’s fees and costs. (Agreement, ¶ 6.)
- 18 (d) Net Settlement Amount: At least **\$521,208.89** will be available for distribution to
19 the Aggrieved Employees and the LWDA. Of this amount, the LWDA will
20 receive at least **\$390,906.67** under the Agreement, and Aggrieved Employees will
21 receive at least **\$130,302.22**. (Agreement, ¶ 6.d.)
- 22 (e) Attorney’s Fees: Plaintiffs’ Counsel request an award of attorney’s fees in the
23 amount of **\$305,891.25**, with \$168,240.19 (55%) awarded to Moon & Yang,
24 APC, and \$137,651.06 (45%) awarded to Haines Law Group, APC. (Agreement,
25 ¶ 6.a.)¹ The requested fee is 35% of the MSA.

26
27
28 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 &

- (f) Litigation Costs: Plaintiffs' Counsel seek reimbursement of actual litigation 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; *see, infra*, ¶ 38 and Exh. 2; Haines Decl., ¶ 18 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; *see, infra*, ¶ 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 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; *see, infra*, Exh. 1.)

18. A true and correct copy of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND RELEASE is attached hereto as Exhibit "1."

Yang, APC, is to receive 55% of the fees awarded and Haines Law Group, APC, is to receive 45% of the fees awarded.

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 THE SETTLEMENT MEETS ALL THE CRITERIA FOR APPROVAL

2 19. Plaintiffs and Plaintiffs' counsel have diligently investigated the claim in this matter.
3 Plaintiffs and Counsel concluded, after taking into account the disputed factual and legal issues involved
4 in this Action, the substantial risks attending further prosecution, including risks related to the outcome
5 of possible summary judgment efforts, and the substantial benefits to be received pursuant to the
6 compromise and settlement of the Action as set forth in the Settlement, that settlement on the terms
7 agreed to are in the best interest of Plaintiffs and the Aggrieved Employees and are fair and reasonable.
8 Plaintiffs' Counsel brought to bear a great deal of experience with wage and hour actions in negotiating
9 the settlement of this case.

10 20. Resolution at this time will forestall the need for additional expensive and time-
11 consuming litigation that could very well result in an outcome less satisfactory than that proposed under
12 this settlement. But, before any other consideration, we have agreed to this settlement because it is
13 objectively reasonable. The potential for resolution benefits the aggrieved employees and the State of
14 California, since they do not have to wait additional years for a similar recovery. The efficiency of this
15 litigation benefits the Court, the parties and their counsel. A settled resolution now is the most realistic
16 method for addressing the claims raised in this matter.

17 21. We have engaged in the necessary investigation in this case that made it possible for us to
18 exercise informed judgment in those aspects of the settlement process in which we were involved. The
19 Defendant in this matter produced important information, including policies and time data, and discloses
20 key legal defenses it intended to rely upon. The information, coupled with other data and aggrieved
21 employee interviews, was sufficient to permit Plaintiffs' Counsel to adequately evaluate the settlement.
22 Plaintiffs had more than enough information upon which to evaluate a fair and reasonable settlement
23 amount.

24 22. Here, the expense, complexity and likely duration of future litigation was to some extent
25 an unknown. However, what is certain is that to adequately establish the foundational violations that
26 would support a substantial penalty award, tremendous time and expense would be invested. To
27 adequately establish that aggrieved employees experience the alleged violations, and at what frequency,
28 most of the aggrieved employees would need to be interviewed in a systematic fashion and their

1 testimony cataloged in way sufficiently meaningful to permit the submission of summary evidence at
2 trial, such as via survey. *First*, the burdensome nature of such a process would be expensive and time-
3 consuming. *Second*, the individuals already interviewed confirmed substantial risk that the Court would
4 either substantially reduce any penalty ultimately awarded *or* conclude that the conduct was insufficient
5 to support a penalty award. *Third*, it would be essentially impossible to formulate an objectively reliable
6 means of summarizing testimonial experiences, other than by an extraordinarily detailed survey. And
7 formulating such a survey would have been important, since frequency of violations would need to be
8 established before any penalties could be recovered. In sum, the evidence collected to date leads
9 Plaintiffs to conclude that, to the extent violations occurred, a fact which Defendant disputes, the
10 violations were *not* systematic and *not* uniform across all of Defendant's estimated 2,000 employees
11 who worked during the PAGA period. Alternatively, direct testimony would have been required from as
12 many of the roughly 2,000 aggrieved employees as could be obtained, which would be, at best, very
13 difficult.

14 23. After analyzing the claims in this matter, Plaintiffs have concluded that the value of this
15 Settlement is fair, adequate, and reasonable. The Settlement provides a significant monetary benefit that
16 falls well within "the range of an acceptable settlement" under the circumstances, which is the standard
17 on which the instant Settlement must be judged. As held by the Ninth Circuit, a settlement may be fair
18 and reasonable even where it only provides a fraction of what could have been obtained at trial. The
19 reasonable value of the Settlement was evaluated two ways.

- 20 (a) First, using the most straightforward formulation of applying the "catch-all" \$100
21 penalty specified in Labor Code § 2699(f)(2) to each pay period per employee,
22 for all of the estimated 58,265 pay periods through mediation, the maximum
23 plausible exposure under that direct approach is **\$5,826,500.00**. Settlement of
24 **\$873,975.00** is about 15% of that roughly estimated maximum exposure value.
25 When considering the serious risks discussed herein, and the Court's inherent
26 power to adjust penalties downward to reflect an employer that sought to be in
27 compliance with wage and hour laws, even if mistakes were sometimes made, the
28 compromise figure is reasonable.

1 (b) Second, the Settlement can also be evaluated by looking at each allegation and
2 the penalty that would attach thereto. The Settlement of **\$873,975.00** is 50% of
3 the **\$1,738,820.00** estimate of *risk-adjusted* penalty recovery (excluding interest)
4 at this stage in the litigation, *based upon a penalty-by-penalty analysis*. On that
5 basis, it would be unwise to pass up this settlement opportunity. This assessment
6 is based on a carefully constructed model of the current fair value of the case,
7 using estimated risks, appellate authority, and estimates of violation frequency by
8 pay period. The maximum calculated plausible exposure is **\$9,631,400.00**, *when*
9 *examining each penalty provision separately*. That exposure consists of the
10 following components:

- 11 1) The reasonably estimated penalty exposure for unpaid minimum wage
12 off-the-clock work (Labor Code § 1194) was estimated to be
13 **\$1,274,000.00**. Based on the fact of a uniform donning claim involving
14 minimal attire (a coat and hairnet) and an allegation of occasional
15 problems with timeclocks, the risk-adjusted estimated exposure is
16 estimated to be **\$318,500.00**, based on a risk reduction of 75%, before any
17 Court-imposed reductions for good faith conduct by Defendant.
- 18 2) The reasonably estimated penalty exposure for unpaid overtime work
19 (Labor Code § 558) was estimated to be **\$476,700.00**. Based on a
20 disputed claim as to whether bonuses paid should have been included in
21 the regular rate calculation, the risk-adjusted estimated exposure is
22 estimated to be **\$119,175.00**, based on a risk reduction of 75%, before any
23 Court-imposed reductions for good faith conduct by Defendant.
- 24 3) The reasonably estimated penalty exposure for late payment of wages
25 owed (Labor Code § 210) was calculated to be **\$1,274,000.00**. Based on
26 the uniform donning claim and disputed regular rate claim, the estimated
27 exposure is estimated to be **\$318,500.00**, based on a risk reduction of
28 75%, before any Court-imposed reductions for good faith conduct by

Defendant. This penalty is contingent on unpaid wage penalties.

- 4) The reasonably estimated exposure for meal break violations over the class period was calculated at **\$638,200.00**. Based on the records of facial violations and the serious risk that employee choice would become an issue that impeded proof, the risk-adjusted estimated exposure is estimated to be **\$63,820.00**, based on a risk reduction of 90%, before any Court-imposed reductions for good faith conduct by Defendant.
- 5) The reasonably estimated exposure for rest break violations over the class period was calculated at **\$872,500**. Based on the records of facial violations (Defendant recorded rest breaks) and the serious risk that employee choice would become an issue that impeded proof, the risk-adjusted estimated exposure is estimated to be **\$218,125.00**, based on a risk reduction of 75%, before any Court-imposed reductions for good faith conduct by Defendant.
- 6) The risk-adjusted penalty recovery for violation of Labor Code § 203 was estimated to be approximately **\$254,800.00**, on a maximum exposure of **\$1,274,000.00**. A risk reduction of 80% was applied to reflect the contingent nature of this claim and the additional need to demonstrate willful misconduct.
- 7) The risk-adjusted penalty recovery for violation of Labor Code § 226 was estimated to be approximately **\$318,500.00**, on a maximum exposure of **\$3,185,000.00**. A risk reduction of 90% was applied to reflect the contingent nature of this claim and the additional need to demonstrate willful misconduct.
- 8) Performing risk-adjusted valuations for all claims yields a total value in the range of **\$1,738,820.00**.

Notably, the maximum plausible exposure assumes high violation rates that would not likely be demonstrated. And the maximum plausible exposure assumes either the participation of all aggrieved

employees or the use of surveys or statistical data as a surrogate, which would still require the participation of many hundreds of persons to have adequate validity. Finally, Defendant's ability to assert viable legal defenses would further reduce the maximum plausible exposure. Beyond that, the Court would retain discretion to reduce any established penalties based upon Defendant's compliant policies. Thus, the likely PAGA exposure is far below the optimistic estimate.

24. The Settlement is the product of arm's-length negotiations between the Parties occurring throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery. The settlement amount is, of course, a compromise figure. By necessity it took into account risks related to liability, damages, and all the defenses asserted by the Defendant. Given the strong case that Defendant could bring to bear, this is not an inconsequential settlement.

THE EXPERIENCE OF COUNSEL

25. Moon & Yang, APC, has been engaged in the practice of employment and labor law for almost a decade and presently focuses exclusively on plaintiffs' employment law. The firm and its lawyers have handled hundreds of wage-related class actions between them. The firm and its lawyers have successfully settled more than 150 class action matters during that time span. The firm and its lawyers have also tried both bench and jury trials (representing both plaintiffs and defendants) relating to employment matters. Moon & Yang, APC, is routinely appointed lead or co-lead class counsel (or counsel for representative plaintiffs in FLSA representative actions) in federal and state courts in California and elsewhere, by way of motion for class certification or motion for settlement approval. I personally participated in the litigation of more than 400 class actions since 1999, and more than 90 percent of those cases were wage and hour matters.

26. Mr. Kane Moon received a B.A. in History in 1998 from UCLA. He received his J.D. from Loyola Marymount Law School in 2006. He became an Active Member of the State Bar of California in June 2007 and has been an Active Member in good standing continuously since then. He is a current member of the California Employment Lawyers Association (CELA).

27. Mr. Moon has been involved as lead or co-lead class counsel in numerous wage and hour

1 class action cases, negotiating wage-and-hour class action settlements worth over \$12.5 million in gross
2 recovery to class members in 2018. The following is a sampling of recent class actions in which he has
3 been appointed as lead or co-lead class counsel:

- 4 (a) *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 20, 2018) No.
5 CV 17-6433 JVS (JCGx), 2018 WL 6616659 (In approving his \$650 hourly
6 rate, the Court found: “Class Counsel's declarations show that the attorneys are
7 experienced and successful litigators. Other courts have approved the attorneys'
8 current rates for the Moon & Yang, APC attorneys.” (*Id.* at *10.));
- 9 (b) *Sison v. Cha Hollywood Medical Center, L.P.*, No. BC644129;
- 10 (c) *Jones v. Fitness Alliance, LLC*, No. PSC1404079;
- 11 (d) *Martinez v. Bail Hotline Bail Bonds, Inc.*, No. BC700131;
- 12 (e) *Solano v. Bhart & Harish International, LLC*, No. BC659761;
- 13 (f) *Rivera v. Complete Landscape Care, Inc.*, No. BC663463;
- 14 (g) *Jones v. Citiguard, Inc.*, No. BC664890;
- 15 (h) *Slaughter v. ACA Security Stems, LP*, No BC699137;
- 16 (i) *De Leon v. Nasa Services, Inc.*, No. BC682425;
- 17 (j) *Lagos v. Thyssenkrupp Elevator Corporation*, No. BC62972 (\$750,000
18 obtained for 65 class members).

19 28. I received my undergraduate degree from Occidental College. Graduating cum laude, I
20 majored in economics and received a “minor” emphasis in mathematics. Along with my study of
21 economics and mathematics, I also had an emphasis in physics. This combination of scientific and
22 economic education has been of assistance during my litigation of complex civil actions. I received my
23 Juris Doctor degree from the University of Southern California Law Center.

24 29. My experience relevant to class action litigation includes the following:

- 25 (a) I have been involved in the litigation of class actions since 1997, working as a
26 law clerk on a number of class action matters. Since 1999, I have participated
27 as an attorney in the litigation of well over 100 class actions, in California
28 Superior Courts and in federal courts in California, Illinois, and Louisiana, and

1 the number of class actions that I have helped to litigate is closer to 150 class
2 actions. I emphasized litigation of wage and hour class actions beginning in
3 2005, but I have focused on complex litigation of different types at all times
4 since 1999.

5 (b) Dating back to 1999, some of the earliest cases in which I contributed to my
6 then-firm's efforts as co-lead/liaison counsel include:

- 7 i. *In re Paradise Memorial Park Litigation*, Los Angeles Superior
8 Court Lead Case No. BC130375; and,
- 9 ii. *In re Lincoln Memorial Park Litigation*, Los Angeles Superior
10 Court Lead Case No. BC133643.

11 (c) I have litigated contested class certification motions multiple times, prevailing
12 on many. Examples include the following:

- 13 1) In 2020, I fully briefed a contested class certification motion in the
14 matter of *Cuadras v. R.C. Wendt Painting, Inc.*, Los Angeles Superior
15 Court Case No. BC705964. After certification was fully briefed, and
16 the motions was heard, the matter successfully settled.
- 17 2) In 2018, I certified wage and hour claims against Home Depot, in the
18 matter of *Utne v. Home Depot*, in the United States District Court,
19 Northern District of California. The contested certification resulted in a
20 certified class of roughly 140,000 individuals.
- 21 3) In 2019, I certified a Fair Credit Reporting Act claim related to
22 employment background checks against Wal-Mart Stores, Inc., in the
23 matter of *Pitre v. Wal-Mart Stores, Inc.*, in the United States District
24 Court, Central District of California. The contested certification
25 resulted in a certified class of over 5,000,000 individuals.
- 26 4) In 2018, I fully briefed a contested class certification motion in the
27 matter of *Harelson v. U.S. Aviation*, in the United States District Court,
28

Northern District of California. After certification was fully briefed, the matter successfully settled.

5) In 2013, I certified an investment fraud suit, in the matter of *Larsen v. Coldwell Banker*, in the United States District Court, Central District of California.

6) In 2012, I fully briefed a contested class certification motion, in the wage and hour matter of *Gillings v. Time Warner*, in the United States District Court, Central District of California. In that matter, summary judgment was granted against my clients and the certification motion was deemed moot. I appealed to the Ninth Circuit and obtained a reversal of the District Court's decision. Upon remand, the matter settled.

7) In approximately 2011, I fully briefed a contested class certification motion, in the wage and hour matter of *Gomez v. Lincare, Inc.*, in the Superior Court of California, County of Orange. Certification was denied. The result was appealed, and a partial reversal was obtained.

8) In approximately 2008, I fully briefed a contested class certification motion, in the wage and hour matter of *Ghazaryan v. Diva Limousine, LTD.*, Superior Court of California, County of Los Angeles. Certification was denied. I appealed, handling all briefing, and, in *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal.App.4th 1524 (2009), pet. for rev. denied, I obtained a decision directing the trial court to certify the class. *Ghazaryan* is now widely cited, including by the California Supreme Court, as a comprehensive source for the standards applied to certification motions in California.

9) In approximately 2006, I fully briefed a contested class certification motion, in the wage and hour matter of *Laliberte v. Pacific Mercantile Bank*, Superior Court of California, County of Orange. Certification

1 was denied. I appealed, handling all briefing. The published opinion of
2 *Laliberte v. Pacific Mercantile Bank*, 147 Cal.App.4th 1 (2007), rev.
3 denied, pet. for cert. den. resulted, and I petitioned for a Writ of
4 Certiorari related to certification due process issues.

5 10) In approximately 2008, I assisted with briefing of a contested class
6 certification motion, in the wage and hour matter, against the
7 Automobile Club of Southern California (AAA). A class was certified
8 and the matter tried. However, I did not participate in that trial, and I
9 have not participated in the trial of a wage and hour class action, other
10 than by assisting with the preparation of trial materials for two such
11 trials.

12 (d) I have prosecuted appeals in more than 20 class action matters alone, arguing
13 before the United States Court of Appeals for the Ninth Circuit Court and
14 several of California's Courts of Appeal. I have taken several appeals through
15 to Petitions for Writs of Certiorari to the United States Supreme Court. In
16 connection with the appeals I have handled, I have participated in appeals
17 resulting in decisions concerning or relating to class actions or wage and hour
18 issues. Among others, those include:

- 19 i. *Donohue v. AMN Services, Inc.*, (February 25, 2021) (amicus
20 counsel);
21 ii. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169
22 (9th Cir. Jan. 29, 2019), pet. for rehearing and pet. for *en banc*
23 rehearing den.;
24 iii. *Troester v. Starbucks Corporation*, 5 Cal. 5th 829 (2018), *as*
25 *modified on denial of reh'g* (Aug. 29, 2018);
26 iv. *Gillings v. Time Warner Cable LLC*, 583 Fed.Appx. 712 (9th Cir.
27 2014);
28

- v. *Ghazaryan v. Diva Limousine, LTD.*, 169 Cal. App. 4th 1524 (2009), pet. for rev. denied;
- vi. *Laliberte v. Pacific Mercantile Bank*, 147 Cal. App. 4th 1 (2007), rev. denied, pet. for cert. denied;
- vii. *Alvarez v. May Dept. Stores Co.*, 143 Cal. App. 4th 1223 (2006), rev. denied, pet. for cert. denied;
- viii. *Johnson v. Glaxosmithkline, Inc.*, 166 Cal. App. 4th 1497 (2008), rev. denied;
- ix. *Howard, et al. v. America Online, Inc.*, 208 F.3d 741 (9th Cir. 2000), pet. for cert. denied;
- x. *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489 (2011) (amicus counsel);
- xi. *D. R. Horton, Inc. and Michael Cuda*, Case 12–CA–25764, 357 NLRB No. 184 (January 3, 2012) (amicus counsel). This NLRB matter is of particular note, as it is at the center of a dispute regarding the interplay between the Federal Arbitration Act (FAA) and two labor relations laws, the National Labor Relations Act (NLRA) and Norris-LaGuardia Act. Cases highlighting that issue have been accepted by the United States Supreme Court.

- (e) I was the lead appellate author in a matter before the California Supreme Court that generated substantial interest in the field of wage and hour litigation. That matter, *Troester v. Starbucks Corporation*, resolved a significant issue of whether, under California law, a *de minimis* defense exists to the employer’s obligation to pay all wages for all compensable time worked by an employee.
- (f) In addition to my work on complex litigation matters and class actions, I have authored published articles and columns on issues related to class actions and other litigation issues, including:

- i. H. Scott Leviant, *Unintended Consequences*, 6 U.C. Davis Bus. L.J.

- 18 (2006), at <http://blj.ucdavis.edu/article.asp?id=636> (May 1, 2006);
- ii. H. Scott Leviant and Lilit Ter-Astvatsatryan, *Where Troester Stops Not Even Troester Knows*, DAILY JOURNAL (Los Angeles), July 2, 2019;
- iii. H. Scott Leviant and Lilit Ter-Astvatsatryan, *Unaccounted Time: Reading the Tea Leaves of Troester*, DAILY JOURNAL (Los Angeles), September 12, 2018;
- iv. Dennis F. Moss and H. Scott Leviant, *Class Actions: One step forward after two steps back*, DAILY JOURNAL (Los Angeles), January 11, 2012;
- v. H. Scott Leviant, *Arbitration: A Look Back, a Look Ahead*, DAILY JOURNAL (Los Angeles), December 28, 2010;
- vi. H. Scott Leviant, *Witnesses Cannot Hide*, Daily Journal (Los Angeles), April 21, 2010;
- vii. H. Scott Leviant, *Divide and Conquer: The New Paradigm of Class Action Defense?*, FORUM, January/February 2009
- viii. H. Scott Leviant, *Class Action Appellate Report*, FORUM, 2009-2010 (Ongoing series);
- ix. H. Scott Leviant & Linh Hua, *Legislature Using Purse Strings to Bind Judiciary*, Daily Journal (San Francisco), March 15, 2010;
- x. H. Scott Leviant, *Wrongfully Recused?*, DAILY JOURNAL (Los Angeles), December 2, 2009;
- xi. H. Scott Leviant, *Cutting Class*, DAILY JOURNAL (Los Angeles), April 15, 2008;
- xii. H. Scott Leviant, *Leveling The Playing Field*, DAILY JOURNAL (Los Angeles), May 4, 2007;

- xiii. H. Scott Leviant, *A Bad Meal Deal: 'Brinker' Gets the Incentive Question Wrong*, DAILY JOURNAL (Los Angeles), August 6, 2008;
- xiv. H. Scott Leviant & Jason E. Barsanti, *Maximize Recovery in Unpaid Wage Cases*, FORUM, January/February 2008;
- xv. H. Scott Leviant, et al., *Electronic Evidence: No Longer an Optional Element in a Comprehensive Litigation Plan*, ADVOCATE, April 2006;
- xvi. H. Scott Leviant, *Improving Rule 12(b)(6) survival odds: Some considerations for effective RICO pleading*, CIVIL RICO REPORT, Volume 15, Number 22, April 26, 2000 (LRP Publications).

(g) In addition to publications in industry newspapers, periodicals and journals, I am the Supervising Editor, primary author and founder of the legal blog The Complex Litigator (<http://www.thecomplexlitigator.com>). The Complex Litigator reports and comments on news and topics relevant to class action and complex litigation practice, with a primary emphasis on wage and hour litigation issues. Through my blog, I have also, on occasion, published podcasts of round table discussions with preeminent members of the wage and hour practice bar on both the plaintiff and defense sides. My blog has been cited to the California Supreme Court in at least one Petition for Review. The Complex Litigator has been in existence since 2008, having outlasted many other legal blogs, and it has a unique readership that numbers in the tens of thousands.

(h) I have also lectured on issues related to class actions and complex litigation, including the following educational seminars:

- i. *Strategies for Settlement of Individual and Wage & Hour Class Actions*, Bridgeport's Eighth Annual Wage & Hour Litigation Conference (December 16, 2011)

- ii. *The Year in Review – Staying Abreast of Current Cases*, Consumer Attorneys of San Diego Class Action Symposium (October 14, 2011)
- iii. *Concepcion v. AT&T and Derivative Wage & Hour Claims*, Bridgeport's Mid Year Wage & Hour Litigation Conference (June 3, 2011)
- iv. *Advanced Principles: UCL Remedies and Defenses*, 20th Annual Golden State Antitrust and Unfair Competition Law Institute (October 21, 2010)
- v. *Refining Your Wage and Hour Practice*, 2010 CELA Annual Conference (October 2, 2010)
- vi. *Word v. WordPerfect Software, Tips, Tools and Tricks: Legal Technology for Plaintiffs Employment Lawyers* (September 30, 2010)
- vii. *California's 17200 -- Its Use and Abuse*, Federalist Society (May 19, 2010)
- viii. *20 Tips for Successful Navigation of e-Discovery Requirements*, Los Angeles County Bar Association's Thirtieth Annual Labor and Employment Law Symposium (March 31, 2010)
- ix. *Social Networking for Lawyers: A Roadmap to Success*, Los Angeles County Bar Association's 2nd Annual two-day 2009 Small Firm and Solo Practitioners Conference: MISSION POSSIBLE (June 25, 2009)
- x. *A Seminar Overview of the Current State of Employment Law*, The Westchester/LAX/Marina Del Rey Chamber of Commerce (February 23, 2006)

- (i) I served three consecutive years as an elected member of the Board of Governors of the Consumer Attorneys of California. In that capacity, I worked

1 to preserve the right of California's consumers and employees to bring proposed
2 class actions. For example, I provided assistance to CAOC in its successful
3 effort to defeat AB 298, which would have substantially impaired the ability of
4 plaintiffs to prosecute class actions in California. More recently, on behalf of
5 CAOC, I co-authored several requests for publication of unpublished class
6 action decisions, including one such request in *Jaimez v. Daihatsu USA, Inc.*, 181
7 Cal. App. 4th 1286 (2010), and authored amicus briefs for CAOC in the Eighth
8 Circuit matter entitled *Avritt v. Reliastar Life. Ins. Co.*, Case No. 09-2843, the
9 California Supreme Court matter entitled *Californians for Disability Rights v.*
10 *Mervyn's, LLC*, 39 Cal. 4th 223 (2006), and the California Court of Appeal
11 matter entitled *Brown v. Ralphs Grocery Company*, 197 Cal. App. 4th 489
12 (2011).

13 30. My current contingent billing rate is consistent with my practice area, legal market and
14 accepted hourly rates:

- 15 (a) In the December 8, 2008 article "Billable Hours Aren't the Only Game in Town
16 Anymore," *NATIONAL LAW JOURNAL*, the following hourly billing rates were
17 reported by Sheppard Mullin Richter & Hampton, a leading firm in the defense of
18 wage-and-hour class actions that I have frequently opposed when litigating wage-
19 and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year
20 - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th
21 Year - \$435, 8th Year - \$455.
- 22 (b) In 2009 I was retained as appellate counsel in the appeal of a denial of class
23 certification. For the specialized work on that appeal, I charged an hourly rate of
24 \$650.00 per hour, a rate the hiring co-counsel accepted.
- 25 (c) In the wage and hour class action *Savaglio, et al, v. WalMart*, Alameda County
26 Superior Court No. C-835687-7, Order Granting Class Counsel's Motion for
27 Attorneys' Fees, filed September 10, 2010, the Court approved hourly rates from
28 \$435 per hour for four years of experience to \$875 per hour for 51 years of

experience.

- (d) The 2017-2018 Adjusted Laffey Matrix states that an attorney with 11 to 19 years experience can reasonably charge \$864 per hour.

<http://www.laffeymatrix.com/see.html>.³ However, that rate is derived from the Washington, D.C. area and requires a costs of living correction for Los Angeles. Using federal statistics for average attorney salaries, attorney pay is 4.4% lower in Los Angeles, compared to Washington, D.C., indicating a 4.4% downward adjustment to the Laffey Matrix is appropriate.

<https://www.bls.gov/oes/current/oes231011.htm>.⁴ However, using federal employee pay tables, federal employee wages are 2.0% higher in Los Angeles, compared to Washington, D.C., indicating a 2.0% upward adjustment to the Laffey Matrix is appropriate. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2017/general-schedule/>.⁵ And, using Schedule 9 of 5 U.S.C. § 5332, there is a 3% differential. Thus, something in the range of a 4.4% locality reduction to a 3.0% locality increase appears appropriate here. Applying an adjustment factor of 3.0%, the locality corrected Adjusted Laffey Matrix hourly rate for attorneys with 11 to 19 years of experience is \$889.92. The complete Adjusted Laffey Matrix, both before and after locality adjustment of 3.0% is set forth below.

- (e) The full 2017-2018 Adjusted Laffey Matrix provides for the following hourly rates for paralegal/law clerks and attorneys falling into various ranges of years of experience:

Year	Adj. Factor**	Paralegal Clerk	1-3	4-7	8-10	11-19	20 +
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864

³ Last viewed January 25, 2018.

⁴ Last viewed March 3, 2017.

⁵ Last viewed March 3, 2017.

Applying the 3.0% locality adjustment to those rates, the Los Angeles rates for the Adjusted Laffey Matrix are as follows:

Year	Adj. Factor**	Paralegal Clerk	1-3	4-7	8-10	11-19	20 +
6/01/17- 5/31/18	1.0463	\$201.88	\$369.77	\$453.20	\$655.08	\$738.51	\$889.92

- (f) I have been selected to Super Lawyers from 2012-2022, achieving that professional recognition for over ten years in a row. I was selected for the Rising Stars edition of Super Lawyers in 2009.
- (g) Based upon my practice area, geographic market, experience, including all of the above information, reputation, and generally accepted hourly rates, my current, regular hourly billing rate is now \$795.00, which is approximately 7% above the 11-19-year adjusted rate of \$738.51 (i.e., the rate considered appropriate for attorneys with as little as 11 years of experience) and well below the presumptively appropriate hourly rate of \$889.92 for attorneys with 20 or more years of experience.
- (h) The billing rates of the attorneys at Moon & Yang, APC, have been approved scores of times, including many dozens of times by the Los Angeles Superior Court.

REASONABLENESS OF THE REQUESTED FEE AWARD

31. When this case was taken on a contingent fee basis, with the firm agreeing to assume responsibility for litigation costs, the ultimate result was far from certain. In the course of this litigation, Moon & Yang, APC, paid filing fees, copy charges, Westlaw fees, and mailing, telephone and express mail charges. There was never a guarantee that Moon & Yang, APC, would recoup those expenditures. The firm took on this case, which necessarily required the firm to forego other opportunities, given finite resources to devote to cases.

32. Because of the uncertainty of the outcome in this and other wage and hour litigation

undertaken by Moon & Yang, APC, we took this case with the expectation that a risk enhancement, either in the form of a lodestar multiplier or a percentage of the fund award equivalent thereto, would be available if we prevailed. This expectation stems from the fact that many cases we undertake as putative class actions do not resolve successfully.

33. Counsel's experience in employment class actions was integral in evaluating strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow fields of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation.

34. In the past 5 years, Moon & Yang, APC, has settled many dozens of wage & hour class actions. Just as the Court in *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) observed, it has been the experience at Moon & Yang, APC, that attorney fee awards of one-third of a common settlement fund are the rule, rather than the exception. Here, Class Counsel agrees that they will seek no more than one third of the settlement amount in fees. This is consistent with common practice, consistent with Ninth Circuit practice, consistent with California law approving the percentage of the fund method to award fees from a common fund, *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016), and not inappropriate in light of the many hours expended by attorneys and paralegals performing work for Plaintiff MATA before and after the filing of this matter. That work includes:

- (a) Numerous interviews with Plaintiff and review of documents provided by Plaintiff;
- (b) Legal research and investigation regarding the Defendant's practices at numerous points in the litigation;
- (c) Preparation of multiple drafts of the original complaints and finalization and filing of the original complaints;
- (d) Extensive "meet and confer" efforts with Defendant's counsel to obtain relevant documents and information through informal discovery;
- (e) Contacting witnesses;
- (f) Drafting the LWDA Notice letter;
- (g) Drafting an amended complaint;
- (h) Review of payroll, job position, and time data;

- (i) Analysis of the audit results and preparation of a damages model with the aid of a statistics expert;
- (j) Review and revisions to the damage model and supporting data analysis;
- (k) Research and preparation of Plaintiffs' mediation brief;
- (l) Attendance at mediation;
- (m) Drafting, negotiating, and reviewing multiple drafts of the Agreement and attachments;
- (n) Preparation of the motion for settlement approval; and,
- (o) Review of edits to the motion for settlement approval and revisions to all documents to conform.

35. The actual lodestar incurred by Plaintiff Mata's counsel is approximately **\$127,273.00** to date (and estimated to be **\$135,223.00** when all is said and done), based on the firm's contemporaneous time recording software, and I did not bill for a significant amount of time related to discovery disputes (I estimate that I did not bill for approximately 5 hours of time reviewing correspondence, reviewing mediation data, and numerous other activities, for an unbilled lodestar of approximately \$3,975). The breakdown of work by attorney is as follows:

Attorney	Time	Rate	Total
Kane Moon	32.7	\$700	\$22,890.00
H. Scott Leviant	98.4	\$795	\$78,228.00
Lilit Tunyan	47.3	\$350	\$16,555.00
Ani Martirosian	23.8	\$300	\$7,140.00
Mariam Ghazaryan	8.2	\$300	\$2,460.00
	210.4	Total:	\$127,273.00

That lodestar would be approximately \$3,975 higher if I included the estimated time that I did not include in by billing entries. The bottom line is that attorneys for Plaintiff MATA invested substantial amounts of time pursuing discovery and evaluating data before and after the mediation in this matter.

1 Those efforts led to this settlement.

2 36. I also anticipate that we will spend an additional 5 hours on this matter, appearing at the
3 hearing of this Motion, working with the administrator to process the Settlement, and preparing final
4 accounting filings after distribution of the Settlement, for an additional lodestar of \$3,975.

5 37. The fee request is **\$305,891.25**, which is 35% of the MSA, as specified in the Settlement
6 Agreement. The requested sum of **\$305,891.25** constitutes a reasonable lodestar multiplier of 2.26, when
7 compared to just the recorded, unbilled, and estimated future lodestar of Moon & Yang, APC, totaling
8 **\$135,223.00** (\$127,273.00 + \$3,975.00 + \$3,975.00). The current lodestar for Haines Law Group, APC
9 is \$105,495.00, as set forth in the Declaration of Paul Haines. The total lodestar for the two firms by the
10 time of the hearing approval will be **\$240,718.00**, resulting in a lodestar multiplier of only 1.27. A
11 multiplier under two is presumptively reasonable for a lodestar crosscheck. Based upon their written fee
12 sharing agreement, Plaintiffs' Counsel request an award of fees of \$168,240.19 (55%) to Moon & Yang,
13 APC, and \$137,651.06 (45%) to Haines Law Group, APC.

14 38. The Agreement also provides for the award of actual costs. Recoverable costs are capped
15 at \$25,000.00 under the Agreement. Those costs are \$9,964.98 for Moon & Yang, APC, as set forth in
16 Exhibit "2," and \$7,019.88 for Haines Law Group, APC. Therefore, Plaintiffs request an award of
17 **\$16,984.86** to reimburse costs incurred in bringing this action.

18 19 THE THIRD-PARTY ADMINISTRATOR

20 39. The parties have agreed that administration will be handled by a third-party administrator.
21 In counsel's experience as class counsel in similar wage-and-hour actions with a similar number of
22 employees, ILYM Group, Inc. is fully capable of administering the Settlement at a competitive and
23 reasonable cost and should be approved by the Court to administer the Settlement notice process.
24 Administration will cost **\$12,985.00**. The bid by ILYM in this matter was lower than bids from other
25 administration firms. See Exhibit 3.

26 27 EXHIBITS

28 40. As noted above, a true and correct copy of the PRIVATE ATTORNEYS GENERAL

1 ACT SETTLEMENT AGREEMENT AND RELEASE is attached hereto as Exhibit “1.”

2 41. Attached hereto as Exhibit “2” is a true and correct copy of the current expense ledger for
3 Moon & Yang, APC.

4 42. Attached hereto as Exhibit “3” is a true and correct copy of the bid submitted by ILYM
5 Group, Inc.

6
7 NOTICE WAS PROVIDED TO THE LWDA

8 43. A copy of the PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT
9 AGREEMENT AND RELEASE was submitted to the LWDA prior to the filing of this motion. That
10 submission is attached hereto as Exhibit “4.”

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

13
14 
15 H. Scott Leviant, “Declarant”

Exhibit “1”

PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT AGREEMENT AND RELEASE

This Private Attorneys General Act (“PAGA”) Settlement Agreement and Release (“Agreement”) is made by and between Plaintiffs FRANCISCA MATA and CRISTINA MARTINEZ (collectively, “Plaintiffs”), acting in their capacity as private attorneys general on behalf of the State of California pursuant to Labor Code section 2699, *et seq.*, and on behalf of all other allegedly aggrieved employees (the “Allegedly Aggrieved Employees,” as described below), on the one hand, and Defendant MARUKAI CORPORATION (“Defendant”), on the other hand. Plaintiffs and Defendant are collectively referred to herein as “the Parties.”

This Agreement, and the settlement embodied herein, shall be binding on Plaintiffs, the Allegedly Aggrieved Employees they represent, and Defendant, subject to the approval of the Court.

WHEREAS, Plaintiffs Francisca Mata and Cristina Martinez have filed separate complaints (“Complaints”) in Los Angeles Superior Court entitled *Mata v. Marukai Corporation*, Case No. 20STCV00959 and *Martinez v. Marukai Corporation*, Case No. 20STCV13862, which were consolidated in one action on December 3, 2020 (the “Lawsuits”). The Lawsuits assert representative claims for civil penalties payable to themselves, other Allegedly Aggrieved Employees, and the State of California pursuant to PAGA, based on allegations that Defendant: (1) failed to pay minimum and regular rate wages; (2) failed to pay overtime compensation; (3) failed to provide meal periods; (4) failed to authorize and permit rest breaks; (5) failed to timely pay final wages at termination; (6) failed to furnish accurate itemized wage statements; and (7) failed to reimburse necessary business expenses. Specifically, the Representative PAGA Claims are claims for civil penalties under PAGA for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders and any other PAGA violations that have been asserted in the Complaints and/or PAGA Notices. The PAGA Notices related to the Lawsuits and sent by Plaintiffs to the Labor and Workforce Development Agency (“LWDA”) are attached hereto as **Exhibit A** (all of the foregoing is collectively referred to as Plaintiffs’ “Representative PAGA Claims”).

WHEREAS, Plaintiffs each sent notices to the LWDA of their intent to pursue representative actions pursuant to PAGA in their respective Lawsuits, on behalf of the State of California as well as on behalf of a group of Allegedly Aggrieved Employees (the notices by Plaintiffs to the LWDA are collectively referred to as the “PAGA Notice” herein).

WHEREAS, Plaintiffs signed arbitration agreements during their respective employment with Defendant, and the arbitration agreements included an express waiver of the right to bring class actions.

WHEREAS, on January 18, 2022, the Parties attended an all-day mediation with experienced wage-and-hour mediator Jeff Ross, Esq. Although the Parties did not settle the matter on the day of the mediation, the mediator prepared and issued a mediator’s proposal which the Parties accepted and agreed to settle Plaintiffs’ Representative PAGA claims, taking into account all known facts and circumstances including the difficulty of proving some of Plaintiffs’ claims, potential defenses asserted by Defendant, the uncertainty associated with litigation, the risks of

significant delay, and numerous potential appellate issues.

WHEREAS, as used herein, “Settlement” means this Agreement and all actions taken pursuant to and in furtherance of this Agreement.

WHEREAS, for purposes of this Settlement, the Allegedly Aggrieved Employees are defined 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 or the date when the total number of pay periods exceeds 58,265 by more than 15%, whichever occurs sooner.”

WHEREAS, for purposes of this Settlement, PAGA Period is defined as the period from January 6, 2019 through April 15, 2022 or the date when the total number of pay periods exceeds 58,265 by more than 15%, whichever occurs sooner.”

WHEREAS, the Parties understand, acknowledge, and agree that this PAGA settlement constitutes a compromise of Plaintiffs’ Representative PAGA Claims and Plaintiffs’ individual claims, and that it is the desire and intention of the Parties to effect a final and complete resolution of the Representative PAGA Claims that Plaintiffs and the Allegedly Aggrieved Employees have against Defendant and Defendant’s past, present and future owners, shareholders, members, parent corporations or entities, sister corporations or entities, related and/or affiliated entities, subsidiaries, divisions, investors, partners, general partners, limited partners, directors, officers, employees, managers, supervisors, assigns, heirs, beneficiaries, predecessors, successors, attorneys, agents, and representatives, and all others related to them, and each of them (collectively, the “Released Parties”). The Parties further acknowledge that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission by Defendant or the Released Parties of any wrongdoing or liability. Specifically, Defendant and the Released Parties deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuits and applicable PAGA Notices. Defendant and the Released Parties, among other things, contend that they have complied at all times with the California Labor Code and all applicable California laws. The Parties have entered into this Agreement to avoid further disputes and litigation with the attendant inconvenience, nuisance, expenses and risks. This Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability. The Parties agree that an express condition of this Agreement is that there has been no finding of liability on the merits.

WHEREAS, California Labor Code § 2699(k)(2) requires Court review and approval of any settlement of a civil action filed pursuant to PAGA.

WHEREAS, based on their own independent investigations and evaluations, Defendant and Plaintiffs and their respective counsel are of the opinion that the amount and terms of the Settlement are fair, reasonable, and adequate and are in the best interests of the Plaintiffs, the Allegedly Aggrieved Employees, and Defendant in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, counsel for Plaintiffs and the Allegedly Aggrieved Employees, Moon & Yang, APC and Haines Law Group, APC believe that the settlement amount entered into is in the best interests of the Allegedly Aggrieved Employees and that the settlement for each Allegedly Aggrieved Employee is fair, reasonable, and adequate, given the inherent risk of litigation.

WHEREAS, the Parties: (1) believe and agree that this Agreement provides for a fair, adequate, and reasonable resolution of the Representative PAGA Claims, (2) have investigated the facts relevant to this settlement and this Agreement, and all matters pertaining thereto, and (3) have arrived at the settlement through extensive, arms-length negotiations, taking into account all relevant factors, present and potential.

WHEREAS, the Parties recognize that in accordance with Labor Code section 2699(l), Court approval is required in the event of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. *See also Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017) (“PAGA authorizes a representative action without the need for class certification”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“a PAGA suit is fundamentally different than a class action” in that PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-47 (2017) (“PAGA does not make other potentially aggrieved employees parties or clients of plaintiff’s counsel, does not impose on a plaintiff or counsel any express fiduciary obligations, and does not subject a plaintiff or counsel to scrutiny with respect to the ability to represent a large class”).

Therefore, in consideration of the promises and agreements contained herein, and to avoid the uncertainty, risks, costs, and delays associated with further litigation, the Parties agree and covenant as follows:

1. Effective Date. The effective date (“Effective Date”) of this 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.

2. PAGA Released Claims/Effect of Judgment on Aggrieved Employees and LWDA. The Parties agree and acknowledge that, to the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiffs, the LWDA, and the Allegedly Aggrieved Employees, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, *et. seq.* only, against Defendant and the “Released Parties”. It is expressly understood and agreed that this Settlement includes a full release of the PAGA claim for violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders, and for any 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** (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. General Release. Subject to Court approval, and in exchange for a general release and for the services provided by Plaintiffs as PAGA representatives, Defendant will not object to Plaintiffs' counsel's application for an enhancement payment of up to \$7,500 to each Plaintiff (total \$15,000) for service as a PAGA representative. Plaintiffs hereby bind themselves, and all of their heirs, beneficiaries, trustees, administrators, executors, assigns, agents and legal representatives and hereby irrevocably and unconditionally release, acquit, and discharge Defendant and the Released Parties and all persons and/or corporate entities acting through, under, on behalf of, or in concert with any of them, or any of them, from any and all PAGA Released Claims defined in Paragraph 2 and any and all existing claims, demands, suits, actions, causes of action, obligations, agreements, contracts, promises, liabilities, debts, compensation, damages, losses, costs, expenses, and attorneys' fees, of any and every kind, nature or character, known or unknown, suspected or unsuspected, actual or potential, absolute or contingent, pending or anticipated, including but not limited to those arising under any federal, state, or local law, regulation or ordinance, contract, quasi-contract, the common law, public policy, or any constitution, such as, without limitation, the California Constitution; the California Labor Code, including Labor Code section 132a; Family and Medical Leave Act; California Family Rights Act; Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the California Fair Employment and Housing Act; the Private Attorneys General Act of 2004; Americans with Disabilities Act; Older Workers Benefit Protection Act; Age Discrimination in Employment Act; Consolidated Omnibus Budget Reconciliation Act of 1985; Employee Retirement Income Security Act of 1974; Immigration Reform and Control Act; the Workers Adjustment and Retraining Notification Act; The Occupational Safety and Health Act; The Sarbanes-Oxley Act of 2002; The Fair Credit Reporting Act; the Equal Pay Act; The Genetic Information Nondiscrimination Act of 2008; Statutory Provision Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775; California Confidentiality of Medical Information Act; California Civil Code section 51 et seq.; Wage Orders of the California Industrial Welfare Commission; the California Code of Regulations; the California Business and Professions Code; Fair Labor Standards Act; and claims of intentional infliction of emotional distress; defamation and/or libel, or any other damage to reputation claims; breach of implied contract; breach of the covenant of good faith and fair dealing, as well as any other express or implied covenant; or any other statute or common law principle of similar effect, known or unknown, which Plaintiffs now have, own, or hold, or claim to have, own, or hold, or which Plaintiffs at any time heretofore had, owned, or held, or claimed to have, own, or hold or which Plaintiffs at any time hereinafter may have, own, or hold, or claim to have, own, or hold, against each or any of Defendant and/or the Released Parties, arising from acts, events, or circumstances occurring on or before the effective date of this Agreement. Plaintiffs also covenant not to sue Defendant and/or Released Parties for any of the claims released above, agree not to participate in any class, collective, representative, or group action that may include any of the claims released above and will affirmatively opt out of any such class, collective, representative or group action. Plaintiffs agree not to participate in, seek to recover in, or assist in any litigation or investigation by other persons or entities against Defendant and/or the Released Parties, except as required by law. The Parties understand and agree that Plaintiffs are not, by way of their general releases, releasing any workers' compensation claims or unemployment benefit claims, nor any other claims which cannot be released as a matter of law.

4. Plaintiffs represent that they are not aware of any claims they may have against Defendant and/or Released Parties other than the claims that are released by this Agreement. Plaintiffs, on behalf of themselves and their respective heirs, beneficiaries, trustees, executors, administrators, assigns, agents, insurers, representatives and successors, expressly waive the benefits of California Civil Code section 1542. Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of section 1542, and for the purpose of implementing a complete release and discharge of the claims in the General Release, Plaintiffs expressly acknowledge that this Agreement is intended to include in its effect all claims, including claims they do not know of or suspect to exist in their favor at the time of execution hereof and that this Agreement contemplates the extinguishment of all such claims against Defendant and Released Parties.

5. **Notice to LWDA.** Pursuant to California Labor Code § 2699(k)(2), Plaintiffs shall submit to the LWDA a copy of this Agreement at the same time that the Plaintiffs submit it to the Court for approval.

6. **Maximum Settlement Amount.** Defendant agrees to pay, in accordance with the terms set forth herein, the total sum of eight hundred seventy-three thousand and nine hundred and seventy-five (\$873,975) (the “Maximum Settlement Amount”) in full settlement of the Lawsuits. Subject to Court approval, the Maximum Settlement Amount will be allocated as follows:

- a. PAGA Counsel’s attorneys’ fees and costs request of up to 35% of the Gross Settlement Amount (\$305,891.25) (“PAGA Counsel’s Fees”) and PAGA Counsel’s separate request for reasonable litigation costs incurred in this matter (“PAGA Counsel’s Costs”) not to exceed \$25,000.00. Defendant will not oppose these requests. To the extent that the Court approves less than the amount of attorney’s fees and costs that PAGA Counsel requests, the amount of any reduction shall be allocated to the PAGA Fund;
- b. Administration costs estimated not to exceed \$25,000.00 to be paid to the Settlement Administrator and the Settlement Administrator’s bid for settlement administration services in the amount of \$14,890 was selected for the reasonable price and the quality of administration services provided by ILYM GROUP, Inc. (“Administration Costs”);
- c. In addition to Plaintiffs’ Individual PAGA Payments, each Plaintiff will receive a \$7,500.00 Enhancement Award (subject to Court approval) (total \$15,000) for their efforts in bringing and prosecuting these Lawsuits and for their general release of all potential claims against Defendant and/or the Released Parties as defined in Paragraph 3, including their individual claims. To the extent that the Court approves less than the amount of the

Enhancement Award that Plaintiffs request, the amount of any reduction shall be allocated to the PAGA Fund;

- d. The remainder of the Maximum Settlement Amount (the “PAGA Fund”) after deducting items (a), (b) and (c) is approximately \$513,193.75, and shall be designated as PAGA Penalties to be allocated between the LWDA and the Allegedly Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% paid to the LWDA (the “LWDA PAGA Portion”) and 25% paid to the Aggrieved Employees (the “Allegedly Aggrieved Employees’ PAGA Portion”) on a pro-rata basis as set forth in Paragraph 6 below.

7. Allocation and Calculation of the Individual PAGA Payments. Each Allegedly Aggrieved Employee shall receive a portion of the PAGA Penalties on a pro-rata basis based on the number of pay periods worked by each Allegedly Aggrieved Employee during the PAGA Period. The Settlement Administrator will calculate: (i) the total number of pay periods worked by each Allegedly Aggrieved Employee during the PAGA Period, and (ii) the total number of pay periods worked by all Allegedly Aggrieved Employees during the PAGA Period. To determine each Allegedly Aggrieved Employee’s Individual PAGA Payment, the Settlement Administrator will use the following formula: Settlement Payment for each PAGA Allegedly Aggrieved Employee = Allegedly Aggrieved Employees’ PAGA Portion ($\approx \$125,770.94$) $\times$ [Pay Periods Worked by Individual Allegedly Aggrieved Employee during the PAGA Period $\div$ Total Pay Periods Worked by All Allegedly Aggrieved Employees during the PAGA Period].

8. Pay Periods: Defendant estimates the Allegedly Aggrieved Employees during the PAGA Period worked approximately 58,265 pay periods and this estimate serves as the basis for Plaintiffs’ accepting the settlement. Should the number of pay periods increase by more than 15% of the total number of pay periods, i.e. 67,004.75 ($58,265 + 8,739.75=67,004.75$), before April 15, 2022, the released PAGA period shall end on the date the number or pay periods exceeds 67,004.75.

9. Tax Treatment of Settlement Amounts. With regard to settlement payments for PAGA penalties to Allegedly Aggrieved Employees, IRS Form 1099s will be issued by the Settlement Administrator. Nothing in this Settlement is intended to constitute legal advice regarding federal, state, and/or local tax obligations. Defendant, their counsel, and Plaintiffs’/PAGA Counsel are not responsible for any employee tax obligations regarding the allocation of the settlement payments. Payment of the portion allocated to PAGA Counsel’s fees and costs will be reflected in a Form 1099 to PAGA Counsel, who shall assume full responsibility and liability for the payment of taxes due on such payments.

10. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF

UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX ADVISERS FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

11. PAGA Settlement Payment Procedures.

- a. Within 30 calendar days of the Effective Date, Defendant shall deposit the Maximum Settlement Amount of \$873,975 with the Settlement Administrator.
- b. Within 15 calendar days of the Effective Date, Defendant shall provide the Settlement Administrator with a list, in a computer-readable format, such as a Microsoft Excel spreadsheet, containing Allegedly Aggrieved Employees' full names, last known mailing addresses, social security numbers, and the actual number of pay periods worked during the PAGA Period. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within 7 calendar days of receiving the Aggrieved Employees' information from Defendant, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.
- c. Upon receipt of the information for Aggrieved Employees, the Settlement Administrator shall run all the addresses of Allegedly Aggrieved Employees through the United States Postal Service National Change of Address ("NCOA") database to obtain current address information.
- d. Within 20 calendar days from the date the Maximum Settlement Amount has been deposited with the Settlement Administrator and after receiving approval from Plaintiffs' counsel of the payment calculations as provided above, the Settlement Administrator shall:
 - i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund to the Allegedly Aggrieved Employees via their Individual PAGA Payments, along with the Employee Letter in English and Spanish, which has been mutually approved by the Parties, (attached hereto

as **Exhibit B**). Allegedly Aggrieved Employees shall not be required to make claims but shall simply be delivered a check for their share of the PAGA settlement. The Individual PAGA Payments and Employee Letter shall be sent to each Allegedly Aggrieved Employee by U.S. First Class mail to the Allegedly Aggrieved Employee's address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located. It will be conclusively presumed that an Allegedly Aggrieved Employee's check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. All uncashed settlement checks shall be sent to the California State Controller's Unclaimed Property division.

- ii. Distribute a total of Seventy-Five percent (75%) of the PAGA Fund to the LWDA.
 - iii. Distribute PAGA Counsel's fees and costs, as approved by the Court.
 - iv. Distribute Enhancement Award to Plaintiffs, as approved by the Court.
 - v. Distribute payment to itself for services as Settlement Administrator, as approved by the Court.
- c. Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Allegedly Aggrieved Employee..
- d. Neither Defendant nor Plaintiffs shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

12. Settlement Administrator. As set forth in Paragraph 10, the Settlement Administrator shall be responsible for calculating settlement payments, preparing all checks and mailings, and complying with all requirements set forth in Paragraph 10. As noted above, the costs

of the Settlement Administrator shall be paid out of the Maximum Settlement Amount, and the Parties agree to use ILYM GROUP, Inc. as a Settlement Administrator.

13. Duties of the Parties Related to Approval. Promptly upon execution of this Agreement, Plaintiffs shall apply to Los Angeles County Superior Court, by way of motion by the Plaintiffs, for approval of the proposed Settlement and resolution of consolidated Lawsuits and for the entry of an order approving this Settlement as required by Labor Code section 2699(1). The approval motion will request Court approval of the following: (1) the terms of this Agreement, (2) the amount of fees and costs to Plaintiff's/PAGA Counsel and the Settlement Administrator, and (3) Final Judgment. In conjunction with the approval motion, Plaintiffs shall submit a proposed Final Judgment requesting the entry of judgment. Plaintiffs will have sole responsibility for drafting and filing the motion for approval of the Settlement but will provide their proposed moving papers to Defendant for review and comment at least three business days before filing them with the Court.

14. Interim Stay of Proceedings. The Parties agree to refrain from further litigation of this matter, except such proceedings necessary to finalize and implement this Agreement and obtain entry of the Final Order granting approval of the terms of the Agreement.

15. Accounting. Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

16. Tax Consequences. Neither Plaintiffs nor Defendant, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

17. Invalid without Court Approval. In the event this Settlement Agreement is not approved by the Court, it shall be deemed null and void, of no force and effect, and of no probative or evidentiary value, and the Parties hereto represent, warrant, and covenant that it will not be used or referred to for any purpose whatsoever. In the event that the Agreement does not become final for any reason, this Agreement shall be null and void and any order entered by the Court in furtherance thereof shall be treated as void ab initio. In such a case, the Parties shall return to the status quo as if they had not entered into this Settlement Agreement. The Settlement Administrator will be paid by Plaintiffs for its costs through the date it is notified that the Settlement will not proceed.

18. Non-Admission of Wrongdoing. The Parties agree that this Agreement does not constitute an admission by Defendant or any Released Party, of any of the matters alleged in the Lawsuits or of any violation by any of them of any federal, state or local law, ordinance or regulation, or of any violation of any policy or procedure, or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Defendant or the Released Parties, or the Released Parties' parents, subsidiaries, divisions, affiliated corporations, trustees, directors, officers, shareholders, agents, attorneys, insurers, or employees.

19. Nondisclosure and Nonpublication. Plaintiffs agree not to publicize the Agreement, the fact of the Agreement, its terms or contents, or the negotiations underlying the

Agreement, in any manner or form, directly or indirectly, to any person or entity, beyond filing the Agreement with the Court and submitting a copy to the LWDA. In response to any inquiries, Plaintiffs will state that “the case was resolved and it was resolved confidentially.” Plaintiffs’ counsel shall not report the Agreement in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiffs or Allegedly Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement. However, Plaintiffs’ counsel is authorized to make a limited disclosure to the Court and the LWDA for the purposes of obtaining the approval of the settlement. Plaintiffs’ counsel may list the case name and number and a description of the allegations in their qualifications as counsel in other cases.

20. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

21. Enforcement. The Parties agree that following entry of the Final Judgment, this Settlement Agreement shall be enforceable by the Court and the Court shall retain exclusive and continuing jurisdiction of the Lawsuits over all Parties and the Allegedly Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement pursuant to pursuant to California Code of Civil Procedure section 664.6.

22. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts and writings prior to the date hereof relating to the subject matters hereof. Any representation promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either Party. This is a fully integrated agreement. No other promises or agreements shall be binding or shall modify this Agreement unless in writing and signed by the Parties.

23. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Settlement Agreement that can be given effect without the invalid provisions or application, and to this end, the provisions of this Agreement are declared to be severable. Notwithstanding the foregoing, no portion of any release contained herein may be deemed severed or deleted from this Agreement, except upon waiver in writing by the applicable Released Party.

24. No Construction Against the Drafter. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

25. Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

26. Counterparts. This Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

27. Cooperation. Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: April ____, 2022

Plaintiff Francisca Mata

Dated: April ____, 2022

Plaintiff Cristina Martinez

Dated: April ____, 2022

Defendant Marukai Corporation

By: _____

Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April ____, 2022

MOON & YANG, APC

Kane Moon
H. Scott Leviant
Lilit Tunyan
Attorneys for Plaintiff Francisca Mata

Dated: April ____, 2022

Haines Law Group, APC

Paul Haines
Sean M. Blakely
Neil M. Larsen
Attorneys for Plaintiff Cristina Martinez

Dated: April ____, 2022

BUCHALTER, A Professional Corporation

Joshua Mizrahi
Graham Lambert
Attorneys for Defendant Marukai Corporation

27. **Cooperation.** Each Party, on behalf of themselves, and their respective business entities, heirs, executors, and assigns, agrees that they will abide by this Agreement and will do all such acts, and prepare, execute, and deliver all such documents, as may be reasonably required to carry out the stated objectives of this Agreement.

Dated: April 5, 2022

DocuSigned by:
Francisca Mata
B09B122C158C42C...

Plaintiff Francisca Mata

Dated: April _____, 2022

Plaintiff Cristina Martinez

Dated: April _____, 2022

Defendant Marukai Corporation
By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April 5, 2022

MOON & YANG, APC
H. S. Leviant

Kane Moon
H. Scott Leviant
Lilit Tunyan
Attorneys for Plaintiff Francisca Mata

Dated: April _____, 2022

Haines Law Group, APC

Paul Haines
Sean M. Blakely
Neil M. Larsen
Attorneys for Plaintiff Cristina Martinez

Dated: April _____, 2022

BUCHALTER, A Professional Corporation

Joshua Mizrahi
Graham Lambert
Attorneys for Defendant Marukai Corporation

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Dated: April ____, 2022

Plaintiff Francisca Mata

Dated: April 06, 2022



Cristina martinez (Apr 6, 2022 13:48 PDT)
Plaintiff Cristina Martinez

Dated: April ____, 2022

Defendant Marukai Corporation
By: _____
Its: _____

APPROVED AS TO FORM AND CONTENT:

Dated: April ____, 2022

MOON & YANG, APC

Kane Moon
H. Scott Leviant
Lilit Tunyan
Attorneys for Plaintiff Francisca Mata

Dated: April ____, 2022

Haines Law Group, APC



Paul Haines
Sean M. Blakely
Neil M. Larsen
Attorneys for Plaintiff Cristina Martinez

Dated: April ____, 2022

BUCHALTER, A Professional Corporation

Joshua Mizrahi
Graham Lambert
Attorneys for Defendant Marukai Corporation

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Dated: April ____, 2022

Plaintiff Francisca Mata

Dated: April 06, 2022



Cristina martinez (Apr 6, 2022 13:48 PDT)
Plaintiff Cristina Martinez

Dated: April 11, 2022



Defendant Marukai Corporation
By: Reid Matsumoto
Its: Vice President

APPROVED AS TO FORM AND CONTENT:

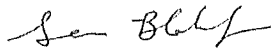
Dated: April ____, 2022

MOON & YANG, APC

Kane Moon
H. Scott Leviant
Lilit Tunyan
Attorneys for Plaintiff Francisca Mata

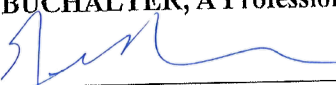
Dated: April ____, 2022

Haines Law Group, APC



Paul Haines
Sean M. Blakely
Neil M. Larsen
Attorneys for Plaintiff Cristina Martinez

Dated: April 12, 2022

BUCHALTER, A Professional Corporation


Joshua Mizrahi
Graham Lambert
Attorneys for Defendant Marukai Corporation

Exhibit “A”

MOON & YANG, APC

ATTORNEYS AT LAW
WWW.MOONYANGLAW.COM

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Kane Moon, Esq.
kane.moon@moonyanglaw.com

January 6, 2020

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Marukai Corporation
801 Kaheka Street
Honolulu, HI 96814

Notice of Labor Code Violations and PAGA Penalties

Re: ***Francisca Mata v. Marukai Corporation***

To Whom It May Concern:

Please be advised that my office has been retained by Francisca Mata (“Plaintiff”) to pursue a Labor Code Private Attorney General Act (PAGA) representative action (Cal. Lab. Code §§ 2699, *et seq.*) against his former employer, Marukai Corporation. (“Defendant”). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to pursue a PAGA representative action on behalf of herself as an aggrieved employee, on behalf of the State of California, and on behalf of all other current and former aggrieved employees who worked for Defendant in California as an hourly paid, non-exempt employee at any time within the applicable statutory period (hereafter, the “Aggrieved Employees”).

Plaintiff and the Aggrieved Employees of Defendant suffered the Labor Code violations described below.

Factual Background Regarding Plaintiff's Employment with Defendant

Defendant owns and operates an industry, business, and establishment within the State of California, including Los Angeles County. As such, Defendant is subject to the California Labor Code and the Wage Orders issued by the Industrial Welfare Commission ("IWC").

Plaintiff worked for Defendant as a sushi preparer from approximately 2017 to the present, primarily in Los Angeles County. Defendant classified Plaintiff as non-exempt from overtime. During the time period that Plaintiff was employed by Defendant, Plaintiff typically worked 5 days per workweek, and in excess of 8 hours each workday.

Throughout Plaintiff's employment, Defendant committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Failure to Pay for All Hours Worked, Including Overtime

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

Throughout the statutory period, Defendant also maintained a policy and practice of not including all remunerations into the calculation of the regular rate for purposes of paying proper overtime premiums. Specifically, Defendant occasionally paid Plaintiff and the Aggrieved Employees non-discretionary bonuses, but did not include this compensation when calculating the regular rate of pay for overtime purposes. In doing so, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including overtime.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the end of the tenth hour of work. Moreover, Defendant did not have adequate written policies or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of meal periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required meal periods. Accordingly, Defendant's policy and practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of 10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is 6 hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Defendant, however, wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10 minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendant did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendant did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendant have adequate policies or practices regarding the timing of rest periods. Defendant also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further, Defendant did not maintain accurate records of employee work periods, and therefore Defendant cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods during the middle of each work period. Accordingly, Defendant's policy and practice was for Plaintiff and the Aggrieved Employees to work through rest periods and to not authorize or permit them to take any rest periods.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 558, and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Plaintiff seeks penalties under Labor Code § 1174(d). Pursuant to Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 1174.5 for failing to maintain accurate records of hours worked and meal periods.

Failure to Reimburse and Indemnify Expenses

California Labor Code § 2802 requires employers to reimburse employees for their necessary expenditures and losses incurred in direct consequence of the discharge of their duties or of their obedience to directions of the employer.

Throughout the statutory period, Defendant wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant without reimbursement, which included the purchase of non-slip shoes. Plaintiff and the Aggrieved Employees incurred these substantial expenses as a direct result of performing their job duties for Defendant, and Defendant has failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ. These unpaid wages include wages for unpaid work time (including minimum and straight time wages), missed meal periods, and missed rest periods.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Defendant intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify hourly rates, the failure to correctly list gross wages earned, and the failure to list the true net wages earned, including wages for meal periods that were not provided in accordance with California law, wages for rest periods that were not authorized and permitted to take in accordance with California law, and correct wages earned for all hours worked.

As a result of Defendant violating Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights.

Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding \$4,000 dollars per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages and overtime wages;
2. Labor Code § 226.7, 512 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
5. Labor Code § 2802 by failing to reimburse and indemnify employees for expenses and losses in the direct consequence and discharge of their duties;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence to its corporate address, as indicated on the first page.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

MOON & YANG, APC



Kane Moon
Attorney at Law

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

April 9, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Cristina Martinez v. Marukai Corporation*

To Whom It May Concern:

Please be advised that this law firm represents Cristina Martinez (“Ms. Martinez”) for claims arising from her employment with Marukai Corporation; and Does 1 through 100 (collectively “Marukai”). Ms. Martinez is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Marukai’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Marukai’s non-exempt employees who worked for Marukai in California during the one year immediately preceding the date of this letter through the present.

Ms. Martinez was employed by Marukai as a non-exempt employee in Marukai’s San Diego storefront from approximately 2015 until approximately April 17, 2019, when she was terminated by Marukai.

Ms. Martinez and other aggrieved employees were not authorized and permitted to take all required and legally-compliant rest periods due to Marukai’s rest period policies/practices. Specifically, Ms. Martinez and other aggrieved employees were not always authorized and permitted to take all legally compliant rest periods of a net ten minutes. Upon information and belief, Marukai required non-exempt employees to clock in and out for rest periods. However, Ms. Martinez and other aggrieved employees were required to work through their 10-minute rest periods even after punching in and out for rest periods and/or recorded short rest periods (i.e., less than 10 net minutes of rest), due to the demand of their job responsibilities. As a result, Marukai failed to relinquish control over Ms. Martinez and other aggrieved employees during their rest periods and dictated how they spent at least a portion of their 10-minute rest periods, therefore failing to authorize and permit 10 minutes of “net rest time,” in compliance with California law. On those occasions when Ms. Martinez and other aggrieved employees were not provided with all the legally-required and compliant rest periods to which they were entitled, Marukai failed to compensate Ms. Martinez and other aggrieved employees with the

required rest period premium for each workday in which they experienced a rest period violation, as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Marukai maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

Ms. Martinez and other aggrieved employees were not provided with all legally compliant meal periods due to Marukai's meal period policies/practices which routinely failed to provide Ms. Martinez and other aggrieved employees with a duty-free, uninterrupted 30-minute meal period commencing before the end of the fifth hour of work. Specifically, Ms. Martinez and other non-exempt employees were often provided with a meal period that was less than 30 minutes in duration, due to Marukai's requirement that Ms. Martinez and other aggrieved employees return to work to attend to their duties before their meal period was completed. In the event that a legally compliant meal period was not in fact provided, Ms. Martinez and other aggrieved employees were not paid the meal period premium required by Labor Code § 226.7.

As a result of Marukai's failure to pay meal and rest period premium wages, Marukai maintained inaccurate payroll records, issued inaccurate wage statements to Ms. Martinez and other aggrieved employees, and failed to timely pay all final wages to Ms. Martinez and other aggrieved employees upon their separation of employment from Marukai.

As described above, Marukai committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 8 ("Wage Order 8"):

Rest Period Violations

As alleged above, Marukai also failed to authorize and permit Ms. Martinez and other aggrieved employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 8, § 12. As a result, Ms. Martinez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

Meal Period Violations

As alleged above, Marukai failed to provide Ms. Martinez and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 8, § 11. As a result, Ms. Martinez and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of

the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."").

Wage Statement Violations

Marukai was required to furnish Ms. Martinez and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 8, § 7. As a result of Marukai's failure to pay all required meal and rest period premium wages, Marukai maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Martinez and other aggrieved employees in violation of Labor Code § 226. Marukai's failure to comply with its wage statement obligations was knowing and intentional, and Ms. Martinez and other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Marukai failed to timely pay Ms. Martinez and other aggrieved employees all of their final wages at the time of separation, which included all meal and rest period premium wages. Pursuant to Labor Code § 203, Marukai's failure to pay all final wages due to Ms. Martinez and other aggrieved employees was willful and, consequently, entitles Ms. Martinez and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Marukai failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Ms. Martinez will initiate a civil action on behalf of herself and other aggrieved employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Martinez's own investigation, and on information and belief, Marukai committed and continues to commit the following Labor Code violations:

- a. Marukai violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Ms. Martinez and other aggrieved employees all required rest periods and failing to pay rest period premiums to Ms. Martinez and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;
- b. Marukai violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Martinez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;

- c. Marukai violated Labor Code § 226 by failing to furnish Ms. Martinez and other aggrieved employees with accurate and compliant itemized wage statements;
- d. Marukai violated Labor Code §§ 201, 202, and 203 by failing to timely pay all final wages due to Ms. Martinez and other aggrieved employees;
- e. Marukai violated Labor Code § 204 by failing to pay Ms. Martinez and other aggrieved employees all wages earned at least twice during each calendar month; and
- f. Marukai violated Labor Code §§ 1174 by failing to maintain accurate records on behalf of Ms. Martinez and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Marukai if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Marukai Corporation (via certified mail)

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

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| ☐ Return Receipt (electronic) | \$ | |
| ☐ Certified Mail Restricted Delivery | \$ | |
| ☐ Adult Signature Required | \$ | |
| ☐ Adult Signature Restricted Delivery | \$ | |

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MARUKAI CORPORATION
C/O SACHIKO ISHIOKA
1740 W. ARTESIA BLVD
GARDENA, CA 90248



PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

7019 2280 0001 9441 1755

Exhibit “B”

NOTICE OF PAGA ACTION SETTLEMENT

Mata v. Marukai Corporation, Los Angeles County Superior Court Case No. 20STCV00959
Martinez v. Marukai Corporation, Los Angeles Superior Court Case No. 20STCV13862

This is not a solicitation by a lawyer. You are not being sued.

A settlement (the “Settlement”) has been reached in the lawsuits entitled *Mata v. Marukai Corporation*, Los Angeles County Superior Court Case No. 20STCV00959 and *Martinez v. Marukai Corporation*, Los Angeles Superior Court Case No. 20STCV13862 (the “Actions”), asserting claims under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”). The purpose of this Notice is to advise you as to why you have received a portion of the Settlement proceeds. The Settlement resolves the Actions.

Who is affected by this proposed Settlement?

The Court has designated, for settlement purposes only, the following persons as “Allegedly Aggrieved Employees”: all non-exempt employees employed by Defendant Marukai Corporation (“Defendant”) in California at any time during the PAGA Period (the “PAGA Period” refers to the period of January 9, 2019 through April 15, 2022).

According to Defendant’s records, you are one of the Allegedly Aggrieved Employees.

What is this case about?

In the Actions, Plaintiffs Francisca Mata and Cristina Martinez (“Plaintiffs”) assert claims that Defendant violated provisions of the Labor Code giving rise to civil penalty liability under PAGA.

Defendant denies each of Plaintiffs’ claims and all liability and is confident that it has strong legal and factual defenses to these claims. However, Defendant recognizes inherent risks, distractions, and costs associated with continued litigation and has therefore agreed to the instant Settlement.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiffs and Defendant (the “Parties”), through their attorneys and is not an admission of liability on the part of Defendant.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses but did approve the Settlement.

What are the Settlement terms?

Defendant will pay **\$873,975** (the “Maximum Settlement Amount”) for: (a) estimated payment of **\$377,312.81** to the Labor and Workforce Development Agency (“LWDA”) as its 75% share of PAGA penalties, the percentage required by PAGA; (b) estimated payment of **\$125,770.94** to Allegedly Aggrieved Employees collectively as their 25% share of PAGA penalties, (c) estimated payment of attorney’s fees of **\$305,891.25** and litigation costs of **\$25,000.00**; (d) estimated Enhancement Awards to Plaintiffs in the total amount of \$15,000; and (e) estimated payment of administration costs of **\$14,890** to the Settlement Administrator.

By operation of the Settlement’s terms, all Allegedly Aggrieved Employees will release Defendant and its owners, shareholders, members, parent corporations or entities, sister corporations or entities, related and/or affiliated entities, subsidiaries, divisions, investors, partners, general partners, limited partners, directors, officers, employees, managers, supervisors, assigns, heirs, beneficiaries, predecessors, successors, attorneys, agents, and representatives, and all others related to them, and each of them (collectively, the “Released Parties”) from the PAGA claims for civil penalties based on alleged violations of California Labor Code §§ 201, 202, 203, 204, 210, 221, 226, 226.3, 226.7, , 510, 512, 516, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698, 2802, as well as the applicable provisions of the Industrial Wage Orders (the “Released Claims”).

The Settlement Payments to Allegedly Aggrieved Employees are classified as other miscellaneous income and will be reported on IRS Form 1099-MISC, if required. Your share was calculated as a pro rata share based on the number of pay periods you worked during the PAGA Period.

There is no need to take any action to enroll in the settlement, as you have been automatically included. Upon receipt, you may immediately deposit your enclosed settlement check and need not take any further action at this time. Even if you do not cash your check, as a result of the Settlement of the Actions, you will be bound by the release in the Actions.

All checks will remain valid and negotiable for one hundred eighty (180) days from the date of the checks’ issuance and shall thereafter automatically be void if not cashed within that time. Uncashed checks will be sent to the California State Controller’s Unclaimed Property division, in the name of the Allegedly Aggrieved Employee.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

Exhibit “2”

Date	Description	Charge
1/7/2020	Complaint Complaint filing fee	\$ 1,435.00
1/7/2020	Case Database Administration fee	\$ 250.00
2/4/2020	DDS - Attorney Service	\$ 113.72
1/30/2020	LWDA PAGA Notice Filing fee	\$ 75.00
3/31/2020	DDS - Attorney Service	\$ 9.95
6/22/2020	DDS - Attorney Service	\$ 94.95
6/22/2020	DDS - Attorney Service	\$ 29.95
12/21/2020	Ace - Attorney Service	\$ 118.00
2/1/2021	Case Anywhere	\$ 68.40
5/7/2021	Case Anywhere	\$ 120.00
6/30/2021	Ace - Attorney Service	\$ 62.00
8/4/2021	Case Anywhere	\$ 120.00
9/29/2021	Mediation fee (plaintiff share)	\$ 4,500.00
11/11/2021	Case Anywhere	\$ 120.00
2/8/2022	Case Anywhere	\$ 120.00
2/8/2022	Berger Consulting data consultant	\$ 2,475.00
2/9/2022	LASC Filing fee	\$ 7.26
3/2/2022	Ace - Attorney Service	\$ 42.75
		\$ 9,761.98

Future Charges

Motion Filing Fee	\$60.00
LASC Filing Fee	\$8.00
LA Court Connect	\$15.00
Case Anywhere - pending quarerly fee	\$120.00
	\$203.00

Total:	\$ 9,964.98
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Exhibit “3”

Case Name: Mata/Martinez v. Marukai Market

Thursday, March 17, 2022

Requesting Attorneys Name:	Lilit Tunyan
E-Mail:	lilit.tunyan@moonyanglaw.com
ILYM Contact:	Sean Hartranft
E-Mail:	Sean@ilymgroup.com
Contact Number:	949.690.2564

Assumptions: PAGA Settlement

ASSUMPTIONS	
Total Number of Aggreived Employees	2,050
Toll-Free Telephone Support	Yes
Certified Spanish Translation	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - <i>Import and Formatting of Data*</i>	Hourly	\$150.00	6	\$900.00
Project Manager (Case notification and maintenance)	Hourly	\$120.00	8	\$960.00
Toll Free Phone Support	Flat Rate	\$415.00	1	\$415.00
NCOA	Flat Rate	\$240.00	1	\$240.00
Certified Spanish Translation	Flat Rate	\$750.00	1	\$750.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$3,265.00

DISTRIBUTION (Includes EIN, Bank Acct /QSF Setup)*				
Distribution Setup & Management	Hourly	\$150.00	7	\$1,050.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	7	\$875.00
Fulfillment of Notice & Check - (including 1099)	Per Check	\$1.75	2,050	\$3,587.50
USPS First Class 1oz Postage	Per Piece	\$0.55	2,050	\$1,127.50
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	205	\$410.00
Preparation of Taxes	Hourly	\$125.00	10	\$1,250.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$9,800.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	7	\$700.00
Process Unclaimed Funds to State Controller	Flat Rate	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,825.00

Will Not Exceed: \$14,890.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintains reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

Exhibit “4”



Private Attorneys General Act (PAGA) – Filing

Proposed Settlement of PAGA case

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

The timing of the deposit of settlement checks is governed by the provisions of the State Administrative Manual. This ministerial, administrative act of depositing a settlement check mandated by state procedures should not be construed as nor does it constitute an unconditional, voluntary and/or absolute acceptance of settlement proceeds or approval of the terms of any settlement agreement or judgment related to that check.

Your Information (Person Who is Filing)

Your First Name *

Howard

Your Last Name *

Leviant

Your Email Address *

scott.leviant@moonyangla

Your Street Name, Number and Suite/Apt *

1055 W. 7th Street, Suite 1

Your Mobile Phone Number

Your City *

Los Angeles

Your Work Phone Number

2132323128

Your State *

California

Your Zip/Postal Code *

90017

Court and Hearing Information

Court *

Los Angeles Superior Cour

Court Case Number *

20STCV00959

Hearing Date (if any)

05/05/2022

Hearing Time

10:00 a.m.

Hearing Location

312 N. Spring Street, Los A

Number of aggrieved employees *

2000

Gross settlement amount *

873975.00

Gross penalty amount *

521208.89

Penalties to LWDA *

390906.67

Date of proposed settlement *

04/13/2022

This does not appear to be a valid date.

Proposed Settlement and Other Documents

Proposed Settlement *

MARUKAI -- 20...ith EXHS.pdf

Other Attachment (if any)

MARUKAI -- 20... - FINAL.pdf

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

From: [DIR PAGA Unit](#)
To: [H. Scott Leviant](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Wednesday, April 13, 2022 12:53:25 PM

04/13/2022 12:53:11 PM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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

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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: **DECLARATION OF H. SCOTT LEVIANT IN SUPPORT OF 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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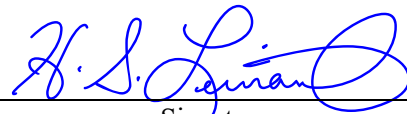
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☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. 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