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MARIELOS ASCENCIO

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 13 2024

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MARIELOS ASCENCIO, an individual,
Plaintiff,

vs.

TOSHIBA AMERICA BUSINESS
SOLUTIONS, INC., a corporation; and DOES
1 through 20 inclusive,
Defendant.

Case No. 30-2021-01207569-CU-WT-NJC

**REVISED [PROPOSED] ORDER AND
JUDGMENT GRANTING MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Assigned for All Purposes to Hon. Lon F.
Hurwitz, Dept. CX103

Complaint Filed: June 25, 2021
Trial Date: Unassigned

1 **TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 On September 19, 2023, Plaintiff Marielos Ascencio (“Plaintiff”) and Defendant Toshiba
3 America Business Solutions, Inc. (“Defendant”) (collectively, the “Parties”) submitted a Joint
4 Notice of Motion and Motion for Approval of PAGA Settlement (“Motion”).

5 Based on the Court’s review of the briefs and evidence submitted in connection with the
6 Motion and applicable laws including but not limited to Labor Code section 2698 *et seq.*, the Court
7 GRANTS the Motion as set forth herein.

8 **A. Procedural History**

9 The Court held two hearings in connection with the Motion – on January 5, 2024 and March
10 8, 2024. At the January 5, 2024 hearing, the Court ordered the Parties to submit additional
11 information and documents, including a revised settlement agreement [ROA 135, Ex. C] to address
12 issues identified by the Court in connection with the prior version submitted to the Court with the
13 initial filing of the Motion. The Parties submitted the additional information and documents and,
14 at the March 8, 2024 hearing, the Court deemed the submissions satisfactory; however, the Court
15 deemed the proposed order unsatisfactory and ordered Plaintiff to submit a new proposed order
16 including substantive information about the litigation and the settlement. The Court initially
17 continued the hearing on the Motion to May 17, 2024 and then further continued the hearing to July
18 5, 2024.

19 The Court appointed Colby Law Firm, PC as counsel for the Aggrieved Employees.

20 **B. Summary of Settlement**

- 21 1. **Aggrieved Employees Definition:** The Aggrieved Employees are “All employees
22 who worked for Toshiba in California during the PAGA Period and who received one
23 or more wage statements during the PAGA Period.” [Settlement Agreement (ROA 135,
24 Ex. C), ¶ 1.4.]
- 25 2. **PAGA Period:** The PAGA Period is “The period from June 24, 2020 through July
26 28, 2021.” [Id., ¶ 1.19.]
- 27
- 28

- 1 3. **Gross Settlement Amount:** The Gross Settlement Amount is \$100,000.00. [Id., ¶
2 3.1.] Defendant shall fund the settlement within fourteen (14) days of the Effective
3 Date. [Id., ¶¶ 1.9, 4.3]
- 4 4. **Settlement Allocation:** The Court approves payments in the following amounts
5 from the Gross Settlement Amount.
- 6 • \$ 40,000.00 for Attorneys' fees (40% of GSA);
7 • \$ 5,972.70 for Litigation costs;
8 • Up to \$ 5,000.00 for Settlement Administration costs; and
9 • \$49,027.30 for PAGA Penalties, with 75% (\$36,770.48) payable to the
10 LWDA and 25% (\$12,256.82) payable to the Aggrieved Employees. [Id., ¶
11 3.2.3.]
- 12 5. **Released Parties:** The Released Parties are "Toshiba and each of its affiliated
13 entities, officers, directors, representatives, owners, partners, subsidiaries, parent
14 companies, joint venturers, insurers, agents, vendors, members, joint employers,
15 predecessors, managers, servants, successors-in-interest, assigns, affiliates, and current
16 and former employees." [Id., ¶ 1.26]
- 17 6. **PAGA Released Claims:** On the date that Defendant fully funds the settlement, all
18 Aggrieved Employees are deemed to release with prejudice, on behalf of themselves and
19 their respective former and present spouses, representatives, agents, attorneys, heirs,
20 administrators, successors, and assigns, the Released Parties from any and all claims
21 arising under PAGA that could have been made in the broadest sense based on the
22 allegations pled in the Operative Complaint or the PAGA Notice for any violation of
23 Labor Code §§ 226 and 226.3. [Id., ¶ 5.2.]
- 24 7. **Plaintiff's Release:** Plaintiff releases with prejudice the Released Parties "from all
25 claims, transactions, or occurrences arising out of her employment with Toshiba,
26 including but not limited to all claims that were, or reasonably could have been, alleged,
27 based on the facts contained in the Operative Complaint and the PAGA Notice." Release
28 does not extend to any claims or action to enforce the Settlement Agreement, or to claims

1 for vested benefits, unemployment benefits, disability benefits, Social Security benefits,
2 or workers' compensation benefits. Release included a Section 1542 waiver. [Id., ¶ 5.1.]
3 PAGA Counsel releases with prejudice the Released Parties from all claims for PAGA
4 fees incurred in connection with the Operative Complaint and the PAGA Period facts
5 stated in the FAC and the PAGA Notice. [Id., ¶ 5.3.]

6 8. **Valuation of Claims:** The settlement is based on an estimated 419 Aggrieved
7 Employees who worked a total of 11,893 pay periods during the PAGA Pay Period. [Id.,
8 ¶ 4.1.] The Court has reviewed Plaintiff's counsel's valuation and assessment of the
9 claims raised and finds the Gross Settlement Amount and terms of the settlement to be
10 fair, adequate, and reasonable. [See Supplemental Declaration of Zoe Yuzna In Support
11 of The Motion, Ex. G.]

12 9. **Payments to Aggrieved Employees:** Pro rata share of 25% of PAGA Penalties
13 (\$12,256.82) based on number of pay periods each Aggrieved Employee worked during
14 PAGA Period. [Id., ¶ 3.2.3.1] Aggrieved Employees assume full responsibility for any
15 taxes owed on their individual payment. PAGA payments will be reported to IRS.
16 Settlement checks are negotiable for 180 days, and thereafter will be voided. Funds from
17 uncashed checks will be transmitted to State Controller's Unclaimed Property Fund.
18 [Id., ¶ 4.4.]

19 10. **Settlement Administration:** The Court appoints ILYM Group, Inc. as the
20 Settlement Administrator. [Id., ¶ 7.1.]

21 11. **Objections:** Notice of this settlement was provided to the LWDA on September 19,
22 2023, and the LWDA has not objected to the settlement. [Yuzna Supp. Decl., ¶¶ 5-7,
23 Ex. D and E.] As the real party in interest in a PAGA action is the State, the Aggrieved
24 Employees do not have a right to object or opt-out of the settlement.

25 12. **Notice to Aggrieved Employees:** The Court approves the proposed notice to
26 accompany settlement payments mailed to Aggrieved Employees. [Yuzna Supp. Decl.,
27 Ex. F.]
28

13. **Continuing Jurisdiction:** Settlement states that Court will retain jurisdiction to enforce the settlement pursuant to CCP § 664.6. [Settlement, ¶ 9.]

C. Order On The Motion

IT IS ORDERED that the Motion is GRANTED and the PAGA Settlement is approved.

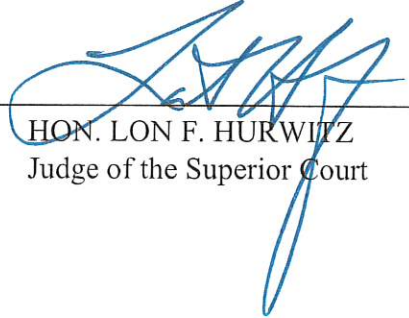
IT IS FURTHER ORDERED that:

- Colby Law Firm, PC shall submit a copy of the Order and Judgment to the LWDA within ten (10) calendar days after entry of the Order and Judgment, and file a proof of service within five (5) calendar days of the date the Order is entered.
- The Final Accounting Hearing is set for February 7, 2025 at 1:30 p.m. in Department CX103 at Central Justice Center, Complex Civil Panel at 751 West Santa Ana Boulevard Santa Ana, CA 92701. Counsel must submit a final report regarding distribution of the settlement funds at least fourteen (14) calendar days prior to the hearing.

IT IS SO ORDERED.

SEP 13 2024

Dated: _____



HON. LON F. HURWITZ
Judge of the Superior Court

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 13263 Ventura Boulevard, Suite 203, Studio City, California 91604

On September 4, 2024, I served the following document(s) on the following recipient(s) via electronic mail:

Document(s) Served

REVISED [PROPOSED] ORDER AND JUDGMENT GRANTING MOTION FOR APPROVAL OF PAGA SETTLEMENT

Recipient(s)

- Carolyn E. Sieve (csieve@constangy.com)
- Judy Gabor (jgabor@constangy.com)
- Victoria Cuthbertson (vcuthbertson@constangy.com)
- Matthew Scholl (mscholl@constangy.com)

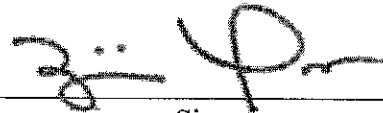
I served a true and correct copy of the above document(s) by electronic delivery pursuant to C.C.P. 1010.6, calling for agreement to accept service by electronic delivery, to the interested parties in this action as indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on September 4, 2024 at Los Angeles, California.

ZOE YUZNA

Print Name



Signature

PROOF OF SERVICE

1 **PROOF OF SERVICE**

2 *Marielos Ascencio v. Toshiba America Business Solutions, Inc..*
3 Orange County Superior Court Case No. 30-2021-01207569-CU-WT-NJC

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not
5 a party to the above-entitled action. My business address is COLBY LAW FIRM, PC, 13263 Ventura
6 Boulevard, Suite 203, Studio City, California 91604.

7 On September 25, 2024, I served the following document(s) on the interested parties below:

8 **Document(s) Served:**

- 9
 - **ORDER AND JUDGMENT GRANTING MOTION FOR APPROVAL OF PAGA SETTLEMENT**

10 **Recipient(s):**

- 11
 - Carolyn E. Sieve (csieve@constangy.com)
 - 12 • Judy Gabor (jgabor@constangy.com)
 - 13 • Victoria Cuthbertson (vcuthbertson@constangy.com)
 - 14 • Matthew Scholl (mscholl@constangy.com)

15 **VIA ELECTRONIC MAIL** – I served a true and correct copy of the above document(s) by
16 electronic delivery pursuant to C.C.P. 1010.6, calling for agreement to accept service by electronic
17 delivery, to the interested parties in this action as indicated above.

18 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
19 true and correct.

20 Executed on September 25, 2024 at Los Angeles, California.

21 NIRA AMOONA

22 Print Name

23 

24 Signature