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Attorneys for Plaintiff
MARIELOS ASCENCIO

**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

**SUPPLEMENTAL DECLARATION OF
ZOE YUZNA IN SUPPORT OF JOINT
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

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

Date: March 8, 2024
Time: 1:30 p.m.
Dept.: CX103 via Zoom

Complaint Filed: June 25, 2021
Trial Date: Unassigned

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1. I am over 18 years of age. I am an attorney with Colby Law Firm, PC, counsel for Plaintiff Marielos Ascencio (“Plaintiff”) in the above-captioned lawsuit against Toshiba America Business Solutions, Inc. (“Defendant”). Plaintiff and Defendant are referenced collectively herein as the “Parties.”

2. The following facts are within my personal knowledge and knowledge obtained in my professional capacity in the ordinary course of business and, if called as a witness herein, I can and will competently testify thereto.

3. This declaration is prepared and submitted in response to the Court’s January 5, 2024 order requiring the Parties to supplement certain information in connection with their Joint Motion for Approval of PAGA Settlement (the “Order”).

4. Attached hereto as **Exhibit C** is a true and correct copy of the Parties' *Revised PAGA Settlement Agreement* with revisions addressing the following parts of the Order:

- Item 11 – time to cash checks;
- Item 3 – administrator duties; and
- Item 16 – authority for continuing jurisdiction.

Exhibit C contains a final version of the revised agreement, followed by a copy with redlines identifying the above-listed revisions.

5. Attached hereto as **Exhibit D** is a PDF of the transmission receipt from the LWDA documenting my office's *September 19, 2023 LWDA submission of the initial settlement agreement and notice of the initial motion* (and hearing date) (*in response to Item 16 of the Order*).

6. My office gave notice of the revised PAGA settlement agreement and the continued motion hearing date to the Labor & Workforce Development Agency (“LWDA”) on February 26, 2024.

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7. Attached hereto as **Exhibit E** is a PDF of the transmission receipt from the LWDA documenting my office's ***February 26, 2024 submission of the revised settlement agreement to the LWDA***, with notice to the LWDA of the continued hearing date on the Joint Motion For Approval Of PAGA Settlement (*in response to Item 16 of the Order*).

Revised Notice to Aggrieved Employees

8. Attached hereto as **Exhibit F** is a true and correct copy of the ***revised proposed notice to Aggrieved Employees***.

PAGA Valuation Assumptions and Data

9. Attached hereto as **Exhibit G** is a true and correct copy of my explanation of the ***PAGA valuation*** of Plaintiff's underlying claim and how PAGA penalties were contemplated, including assumptions/data that supports the valuation and Gross Settlement Amount (*in response to Item 8 of the Order*).

Escalator Clause

10. The settlement does not include an escalator clause because the PAGA Period ended over two years ago on July 28, 2021 and thus, the Aggrieved Employee and PAGA Pay Period numbers are certain and not subject to increase (which obviates the need for an escalator clause) (*in response to Item 10 of the Order*).

Attorneys' Fees and Costs and Explanation Re: Enhancement

11. Attached hereto as **Exhibit H** is information relating to attorneys' fees and costs (*in response to Item 12 of the Order*).

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12. Because Plaintiff was able to secure a settlement of her individual claims, Plaintiff opted not to seek an enhancement award in the instant settlement, so that all funds to the Aggrieved Employees will be distributed equally according to the terms of the agreement (*in response to Item 12 of the Order*).

I declare under penalty of perjury under the laws of the United States of America and the State of California that the forgoing is true and correct.

Executed on February 26, 2024 in Los Angeles, California.

2. f

Zoe Yuzna

EXHIBIT C

REVISED PAGA SETTLEMENT AGREEMENT

This Revised PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Marielos Ascencio (“Plaintiff”) and defendant Toshiba America Business Solutions, Inc. (“Toshiba”), with revisions pursuant to the January 5, 2024 order in the Action (as defined below at Section 1.1). The Agreement refers to Plaintiff and Toshiba collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1 “Action” means the PAGA lawsuit currently pending on Orange County Superior Court captioned *Marielos Ascencio v. Toshiba America Business Solutions, Inc.*, Orange County Superior Court Case No. 30-2021-01207569-CU-WT-CJC.

1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employees” means all employees who worked for Toshiba in California during the PAGA Period and who received one or more wage statements during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Toshiba’s possession including each Aggrieved Employee’s name, last-known mailing address, Social Security number, and the number of PAGA Pay Periods worked during the PAGA Period.

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7. “Court” means the Superior Court of California, County of Orange.

1.8 “Defense Counsel” means Carolyn E. Sieve and Matthew Scholl of the law firm Constangy, Brooks, Smith & Prophete, LLP.

1.9. “Effective Date” means the date that is sixty-five (65) days after the date on which the Court enters Judgment, unless there is an appeal. If there is an appeal, the Effective Date will be the date on which (a) all such appeals have been dismissed; or (b) the appropriate Court of Appeals has entered a final judgment affirming the Approval Order and Judgment, which is no longer subject to any further appellate challenge.

1.10. “Gross Settlement Amount” means One Hundred Thousand Dollars (\$100,000.00) which is the total amount Toshiba agrees to pay under this Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrations Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court after the Court approves this Settlement.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Aaron N. Colby and Zoe Yuzna of the Colby Law Firm, PC, attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee received an itemized wage statement from Toshiba during the PAGA Period.

1.19. "PAGA Period" means the period from June 24, 2020 through July 28, 2021.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

1.21. "PAGA Notice" means the amended notice submitted by PAGA Counsel to the LWDA on or about June 25, 2021 providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.23. "Plaintiff" mean Marielos Ascencio, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. “Released Parties” means Toshiba and each of its affiliated entities, officers, directors, representatives, owners, partners, subsidiaries, parent companies, joint venturers, insurers, agents, vendors, members, joint employers, predecessors, managers, servants, successors-in-interest, assigns, affiliates, and current and former employees.

1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.28. “Toshiba” means named Defendant Toshiba America Business Solutions, Inc.

2. RECITALS.

2.1. On June 25, 2021, Plaintiff commenced the Action by filing a Complaint in Orange County Superior Court alleging fourteen individual causes of action against Toshiba for various violations of the California Fair Employment and Housing Act (“FEHA”) and the California Labor Code. On September 28, 2021, Plaintiff filed the operative First Amended Complaint adding a fifteenth representative cause of action for civil penalties under the Private Attorneys General Act (the “Operative Complaint”). Toshiba denies the allegations in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Toshiba and the LWDA of the facts and theories underlining the PAGA claim asserted in the Operative Complaint.

2.3. On April 10, 2023, Plaintiff filed a request to dismiss with prejudice the fourteen individual causes of action in the Operative Complaint, leaving only the fifteenth representative cause of action under the PAGA. This Settlement resolves this fifteenth cause of action under the PAGA.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Toshiba promises to pay One Hundred Thousand Dollars (\$100,000.00) and no more as the Gross Settlement Amount. Toshiba has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Toshiba

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment not to exceed 40% of the Gross Settlement Amount, which is currently estimated to be Forty Thousand Dollars (\$40,000.00) and PAGA Counsel Litigation Expenses Payment not to exceed \$5,972.70. Toshiba will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for the PAGA Counsel Fees Payment and the PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the difference between the amounts requested

and the amount approved by the Court to PAGA Penalties. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds the Released Parties harmless, and indemnifies the Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administration Expenses Payment not to exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000, the Administrator shall allocate the difference to PAGA Penalties.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties, estimated to be \$49,027.30, to be paid from the Gross Settlement Amount, with 75% (\$36,770.48) allocated to the LWDA PAGA Payment and 25% (\$12,256.92) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$12,256.92) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. There are 419 Aggrieved Employees who worked a total 11,893 PAGA Pay Periods. This number is certain because the PAGA Period ended over two years ago on July 28, 2021 and thus, there is no ongoing time frame in which additional Aggrieved Employees or PAGA Pay Periods would be added to distribution of the Gross Settlement Amount; thus, there is no need for an escalator clause or any other means of accounting for additional Aggrieved Employees or PAGA Pay Periods.

4.2. Aggrieved Employee Data. Within seven (7) business days of the Effective Date, Toshiba will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Toshiba has a continuing duty to provide corrected or updated Aggrieved Employee Data to the Administrator to the extent necessary. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Toshiba shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) business days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Toshiba funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Toshiba to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Toshiba fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims with prejudice against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge with prejudice Released Parties from all claims, transactions, or occurrences arising out of her employment with Toshiba, including but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's

Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release with prejudice, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims arising under PAGA that could have been made in the broadest sense based on the allegations pled in the Operative Complaint or the PAGA Notice for any violation of Labor Code §§ 226 and 226.3. Aggrieved Employees shall release these claims for the entire PAGA Period. Aggrieved Employees shall have no right to opt out of this Settlement.

5.3 Release by PAGA Counsel: PAGA Counsel release with prejudice on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement

no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together in good faith to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together in good faith to modify the Agreement and otherwise address the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings, if any, and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all legally required tasks to be performed or observed by the Administrator contained in this Agreement or otherwise, which may include, posting the operative Complaint, Notice to Aggrieved Employees, and Order and Judgment on its website. Additionally, the Administrator must provide an invoice of fees and expenses.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES: Based on its records, Toshiba counts 419 Aggrieved Employees who worked 11,893 Pay Periods during the PAGA Period.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that, after entry of Judgment, pursuant to C.C.P. section 664.6, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as

the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Toshiba that any of the allegations in the Operative Complaint have merit or that Toshiba has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Toshiba's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Toshiba reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Toshiba's defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement of Plaintiff's PAGA claim, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party with respect to Plaintiff's PAGA claim.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Toshiba, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying this Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Toshiba nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Toshiba in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Toshiba unless, prior to the Administrator's payment of all Settlement Funds, Toshiba makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
Aaron Colby, Esq.
COLBY LAW FIRM, PC
13263 Ventura Boulevard, Suite 203
Studio City, California 91604
aaron@colbylegal.com

To Toshiba:
Carolyn E. Sieve
Matthew Scholl
CONSTANGY, BROOKS, SMITH & PROPHETE, LLP
3420 Bristol Street, 6th Floor

Costa Mesa, California 92626
csieve@constangy.com
mscholl@constangy.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

APPROVED BY:

Date: February 23, 2024

DocuSigned by:

By: 1C9C5EC3DC6A405
Marielos Ascencio

Date: February 21, 2024

By: 
Larry White (Feb 21, 2024 13:25 PST)
Name: Larry White
Title: President & CEO
Toshiba America Business Solutions, Inc.

Date: February 20, 2024

COLBY LAW FIRM, PC
By: 

Aaron N. Colby, Esq.
Attorneys for Plaintiff Marielos Ascencio

Date: February 23, 2024

CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP
By: 

Carolyn E. Sieve, Esq.
Matthew Scholl, Esq.
Attorneys for Toshiba America Business Solutions, Inc.

PAGA Settlement Agreement_Ascencio v. Toshiba (Rev. Feb 2024)_TABS 2.20.24

Final Audit Report

2024-02-21

Created:	2024-02-21
By:	DEBRAANN BUTTACAVOLI (debbie.buttacavoli@tabs.toshiba.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAABsOkX5IU_eYzEpUKOPWJ-MNLE2G_T8n-

"PAGA Settlement Agreement_Ascencio v. Toshiba (Rev. Feb 2024)_TABS 2.20.24" History

-  Document created by DEBRAANN BUTTACAVOLI (debbie.buttacavoli@tabs.toshiba.com)
2024-02-21 - 8:23:59 PM GMT
-  Document emailed to Larry White (larry.white@tabs.toshiba.com) for signature
2024-02-21 - 8:24:03 PM GMT
-  Email viewed by Larry White (larry.white@tabs.toshiba.com)
2024-02-21 - 9:24:17 PM GMT
-  Document e-signed by Larry White (larry.white@tabs.toshiba.com)
Signature Date: 2024-02-21 - 9:25:12 PM GMT - Time Source: server
-  Agreement completed.
2024-02-21 - 9:25:12 PM GMT

REDLINES OF CHANGES IN REVISED AGREEMENT

REVISED PAGA SETTLEMENT AGREEMENT

This Revised PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Marielos Ascencio (“Plaintiff”) and defendant Toshiba America Business Solutions, Inc. (“Toshiba”), with revisions pursuant to the January 5, 2024 order in the Action (as defined below at Section 1.1). The Agreement refers to Plaintiff and Toshiba collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

1.1 “Action” means the PAGA lawsuit currently pending on Orange County Superior Court captioned *Marielos Ascencio v. Toshiba America Business Solutions, Inc.*, Orange County Superior Court Case No. 30-2021-01207569-CU-WT-CJC.

1.2 “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4 “Aggrieved Employees” means all employees who worked for Toshiba in California during the PAGA Period and who received one or more wage statements during the PAGA Period.

1.5 “Aggrieved Employee Data” means Aggrieved Employee identifying information in Toshiba’s possession including each Aggrieved Employee’s name, last-known mailing address, Social Security number, and the number of PAGA Pay Periods worked during the PAGA Period.

1.6 “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1.7 “Court” means the Superior Court of California, County of Orange.

1.8 “Defense Counsel” means Carolyn E. Sieve and Matthew Scholl of the law firm Constangy, Brooks, Smith & Prophete, LLP.

1.9 “Effective Date” means the date that is sixty-five (65) days after the date on which the Court enters Judgment, unless there is an appeal. If there is an appeal, the Effective Date will be the date on which (a) all such appeals have been dismissed; or (b) the appropriate Court of Appeals has entered a final judgment affirming the Approval Order and Judgment, which is no longer subject to any further appellate challenge.

1.10 “Gross Settlement Amount” means One Hundred Thousand Dollars (\$100,000.00) which is the total amount Toshiba agrees to pay under this Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrations Expenses Payment.

1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.

1.12. "Judgment" means the judgment entered by the Court after the Court approves this Settlement.

1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Aggrieved Employees as Individual PAGA Payments.

1.16. "PAGA Counsel" means Aaron N. Colby and Zoe Yuzna of the Colby Law Firm, PC, attorneys representing the Plaintiff in the Action.

1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee received an itemized wage statement from Toshiba during the PAGA Period.

1.19. "PAGA Period" means the period from June 24, 2020 through July 28, 2021.

1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).

1.21. "PAGA Notice" means the amended notice submitted by PAGA Counsel to the LWDA on or about June 25, 2021 providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

1.23. "Plaintiff" mean Marielos Ascencio, the named plaintiff in the Action.

1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.

1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.

1.26. "Released Parties" means Toshiba and each of its affiliated entities, officers, directors, representatives, owners, partners, subsidiaries, parent companies, joint venturers, insurers, agents, vendors, members, joint employers, predecessors, managers, servants, successors-in-interest, assigns, affiliates, and current and former employees.

1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

1.28. "Toshiba" means named Defendant Toshiba America Business Solutions, Inc.

2. RECITALS.

2.1. On June 25, 2021, Plaintiff commenced the Action by filing a Complaint in Orange County Superior Court alleging fourteen individual causes of action against Toshiba for various violations of the California Fair Employment and Housing Act ("FEHA") and the California Labor Code. On September 28, 2021, Plaintiff filed the operative First Amended Complaint adding a fifteenth representative cause of action for civil penalties under the Private Attorneys General Act (the "Operative Complaint"). Toshiba denies the allegations in the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Toshiba and the LWDA of the facts and theories underlining the PAGA claim asserted in the Operative Complaint.

2.3. On April 10, 2023, Plaintiff filed a request to dismiss with prejudice the fourteen individual causes of action in the Operative Complaint, leaving only the fifteenth representative cause of action under the PAGA. This Settlement resolves this fifteenth cause of action under the PAGA.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Toshiba promises to pay One Hundred Thousand Dollars (\$100,000.00) and no more as the Gross Settlement Amount. Toshiba has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Toshiba

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court in the Final Approval:

3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment not to exceed 40% of the Gross Settlement Amount, which is currently estimated to be Forty Thousand Dollars (\$40,000.00) and PAGA Counsel Litigation Expenses Payment not to exceed \$5,972.70. Toshiba will not oppose requests for Court approval of these payments provided that they do not exceed these amounts. Plaintiff and/or PAGA Counsel will file an application or motion for the PAGA Counsel Fees Payment and the PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the difference between the amounts requested

and the amount approved by the Court to PAGA Penalties. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds the Released Parties harmless, and indemnifies the Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the Administrator: An Administration Expenses Payment not to exceed \$5,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000, the Administrator shall allocate the difference to PAGA Penalties.

3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties, estimated to be \$49,027.30, to be paid from the Gross Settlement Amount, with 75% (\$36,770.48) allocated to the LWDA PAGA Payment and 25% (\$12,256.92) allocated to the Individual PAGA Payments.

3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$12,256.92) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.3.2. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. There are 419 Aggrieved Employees who worked a total 11,893 PAGA Pay Periods. This number is certain because the PAGA Period ended over two years ago on July 28, 2021 and thus, there is no ongoing time frame in which additional Aggrieved Employees or PAGA Pay Periods would be added to distribution of the Gross Settlement Amount; thus, there is no need for an escalator clause or any other means of accounting for additional Aggrieved Employees or PAGA Pay Periods.

Deleted: Based on a review of its records to date, Toshiba estimates t

4.2. Aggrieved Employee Data. Within seven (7) business days of the Effective Date, Toshiba will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Toshiba has a continuing duty to provide corrected or updated Aggrieved Employee Data to the Administrator to the extent necessary. The Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.

4.3. Funding of Gross Settlement Amount. Toshiba shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fourteen (14) business days after the Effective Date.

4.4. Payments from the Gross Settlement Amount. Within fourteen (14) days after Toshiba funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA Counsel Expenses Payment. Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual PAGA Payments and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within seven (7) days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.

4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.4. The payment of Individual PAGA Payments shall not obligate Toshiba to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Toshiba fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims with prejudice against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge with prejudice Released Parties from all claims, transactions, or occurrences arising out of her employment with Toshiba, including but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's

Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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.

5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release with prejudice, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims arising under PAGA that could have been made in the broadest sense based on the allegations pled in the Operative Complaint or the PAGA Notice for any violation of Labor Code §§ 226 and 226.3. Aggrieved Employees shall release these claims for the entire PAGA Period. Aggrieved Employees shall have no right to opt out of this Settlement.

5.3 Release by PAGA Counsel: PAGA Counsel release with prejudice on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT. The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the Parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement

no later than thirty (30) days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion.

6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together in good faith to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together in good faith to modify the Agreement and otherwise address the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings, if any, and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all legally required tasks to be performed or observed by the Administrator contained in this Agreement or otherwise, which may include, posting the operative Complaint, Notice to Aggrieved Employees, and Order and Judgment on its website. Additionally, the Administrator must provide an invoice of fees and expenses,

Deleted: . Among the other duties set forth herein, the Administrator must

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8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES:** Based on its records, Toshiba ~~counts~~ 419 Aggrieved Employees who worked 11,893 Pay Periods during the PAGA Period.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, pursuant to C.C.P. section 664.6, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties and their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as

the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Toshiba that any of the allegations in the Operative Complaint have merit or that Toshiba has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Toshiba's defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Toshiba reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Toshiba's defenses. The Settlement, this Agreement and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement of Plaintiff's PAGA claim, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party with respect to Plaintiff's PAGA claim.

10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Toshiba, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying this Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Toshiba nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.

10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Toshiba in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Toshiba unless, prior to the Administrator's payment of all Settlement Funds, Toshiba makes a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.

10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
Aaron Colby, Esq.
COLBY LAW FIRM, PC
13263 Ventura Boulevard, Suite 203
Studio City, California 91604
aaron@colbylegal.com

To Toshiba:
Carolyn E. Sieve
Matthew Scholl
CONSTANGY, BROOKS, SMITH & PROPHETE, LLP
3420 Bristol Street, 6th Floor

Costa Mesa, California 92626

csieve@constangy.com

mscholl@constangy.com

Field Code Changed

10.16 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

APPROVED BY:

Date: _____, 2023

By: _____
Marielos Ascencio

Date: _____, 2023

By: _____

Name: _____

Title: _____
Toshiba America Business Solutions, Inc.

COLBY LAW FIRM, PC

Date: May 16, 2023

By: 

Aaron N. Colby, Esq.
Attorneys for Plaintiff Marielos Ascencio

CONSTANGY, BROOKS, SMITH &
PROPHETE, LLP

Date: _____, 2023

By: _____
Carolyn E. Sieve, Esq.
Matthew Scholl, Esq.
Attorneys for Toshiba America Business Solutions, Inc.

EXHIBIT D



Kaylee Alvarez <kaylee@colbylegal.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Tue, Sep 19, 2023 at 5:14 PM

To: kaylee@colbylegal.com

09/19/2023 05:13:51 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

EXHIBIT E



Kaylee Alvarez <kaylee@colbylegal.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Mon, Feb 26, 2024 at 4:52 PM

To: kaylee@colbylegal.com

02/26/2024 04:52:29 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



Aaron Colby, Esq.
aaron@colbylegal.com
818.253.1599 • colbylegal.com
13263 Ventura Blvd., Suite 203
Studio City, California 91604

February 26, 2024

SENT VIA ONLINE SUBMISSION

California Department of Industrial Relations
Labor and Workforce Development Agency

Dear Sir/Madam:

Please be advised the parties reached a settlement of the above-referenced PAGA claim. A hearing will be conducted on March 8, 2024 at 1:30 p.m. in Dept. CX103 of the Superior Court of the State of California for the County of Orange as to the joint motion for PAGA settlement approval. Attached hereto is the Parties' revised settlement agreement.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Zoe Yuzna".

Zoe Yuzna, Esq.



AARON N. COLBY (State Bar No. 247339)
aaron@colbylegal.com
ZOE YUZNA (State Bar No. 268496)
zoe@colbylegal.com
COLBY LAW FIRM, PC
13263 Ventura Boulevard, Suite 203
Studio City, California 91604
Telephone: (818) 253-1599
Fax: (818) 475-1981

Attorneys for Plaintiff
MARIELOS ASCENCIO

**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

PROOF OF SERVICE

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

Date: March 8, 2024
Time: 1:30 p.m.
Dept.: CX103 via Zoom

Complaint Filed: June 25, 2021
Trial Date: Unassigned

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 February 26, 2024, I served the following document(s) on the following recipient(s) via electronic mail:

Document(s) Served

- **REVISED PAGA SETTLEMENT**
- **COVER LETTER RE REVISED PAGA SETTLEMENT**

Recipient(s)

- California Department of Industrial Relations - Labor and Workforce Development Agency

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 February 26, 2024 at Los Angeles, California.

Kaylee Alvarez

Print Name



Signature

PROOF OF SERVICE

EXHIBIT F

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment – Marielos Ascencio v. Toshiba America Business Solutions, Inc.

Dear <<FIRST_NAME>> <<LAST_NAME>>:

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit entitled Marielos Ascencio v. Toshiba America Business Solutions, Inc., Orange County Superior Court Case No. 30-2021-01207569-CU-WT-NJC. This settlement has been reviewed by the Orange County Superior Court and was approved on <<DATE>>.

The enclosed check must be cashed within 180 days of the issuance date listed on the check. If the check is not cashed within 180 days of the issuance date listed on the check, it will be cancelled and void.

The lawsuit was filed against Toshiba America Business Solutions, Inc. ("TABS") pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq. ("PAGA"), claiming in part that TABS owes penalties under PAGA for allegedly failing to provide complete and accurate itemized wage statements to employees. The claim was brought on behalf of the State of California and "aggrieved employees" of TABS. For the purposes of this settlement, "aggrieved employees" means all employees who worked for TABS in California from June 24, 2020 through July 28, 2021, and who received one or more wage statement during that time. You have been identified as one of the employees entitled to receive payment pursuant to this settlement. This payment is being made to you in exchange for a release of claims for the alleged failure to provide complete and accurate itemized wage statements as required by California Labor Code §§ 226 and 226.3 during the time period of June 24, 2020 through July 28, 2021. This release applies only to claims for civil penalties under PAGA. You have no right to opt out of this settlement and you are bound by this release regardless of whether you negotiate the check enclosed herein.

TABS denies all claims raised in the lawsuit, denies that it did anything wrong, and denies that it owes any penalties. However, the parties agreed to resolve the lawsuit in order to avoid the time and expense of litigation.

The total settlement amount is \$100,000.00, and the following deductions were made from the total settlement amount: (1) attorneys' fees in the amount of \$<<AMOUNT>>; (2) litigation costs in the amount of \$<<AMOUNT>>; and (3) \$<<AMOUNT>> to ILYM Group, Inc. for the cost of settlement administration. Under the PAGA statute, the amount remaining after the above deductions (equal to \$<<AMOUNT>>) is divided between the State (75%, equal to \$<<AMOUNT>>) and the employees (25%, equal to \$<<AMOUNT>>). The 25% distributed to employees was calculated based on each employee's respective number of pay periods worked

for TABS from June 24, 2020 through July 28, 2021. The enclosed check represents your portion of the settlement allocated to the employees.

In cashing the check, you assume full responsibility and liability for any related taxes.

As a result of the settlement described in this letter, you are deemed to release with prejudice, on behalf of yourself and any former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, any and all claims arising under PAGA that could have been made in the broadest sense based on the allegations pled in the Operative Complaint or the PAGA Notice for any violation of Labor Code §§ 226 and 226.3. This release covers the entire PAGA Period (June 24, 2020 through July 28, 2021).

To the extent legally required, ILYM Group, Inc. has posted on its website [INSERT URL] the Operative Complaint, Notice to Aggrieved Employees, and Order and Judgment in this case.

You do not have the right to opt out of this settlement.

If you have any questions, you can contact the claims administrator: ILYM Group, Inc. at <<INSERT>>

Very Truly Yours,

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment – Marielos Ascencio v. Toshiba America Business Solutions, Inc.

Dear <<FIRST_NAME>> <<LAST_NAME>>:

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To the extent legally required, ILYM Group, Inc. has posted on its website [INSERT URL] the Operative Complaint, Notice to Aggrieved Employees, and Order and Judgment in this case.

You do not have the right to opt out of this settlement.

If you have any questions, you can contact the claims administrator: ILYM Group, Inc. at <<INSERT>>

Very Truly Yours,

EXHIBIT G

**SPECIFIC INFORMATION FOR VALUATION OF LABOR CODE VIOLATIONS AND
ASSESSMENT OF PAGA PENALTIES (I.E., WITH STACKING VS. WITHOUT STACKING),
INCLUDING REASONS FOR DISCOUNT**

Maximum Penalties Without Stacking: Colby Law Firm calculated PAGA penalties by (i) multiplying the \$100 penalty for the first pay period per employee per Labor Code violation and then multiplying the \$200 for the rest of the pay periods per employee per Labor Code violation and then (ii) adding those two numbers together, which accounted for maximum PAGA penalties under Labor Code section 2698 (“Maximum Penalties Without Stacking”):

$$[\$100 \times 419 \text{ aggrieved employees' initial pay period violation} = \$41,900] + [\$200 \times 11,474 \text{ (the remaining pay periods in the PAGA Period} = \$2,294,800)] = \underline{\$2,336,700}$$

Maximum Penalties With Stacking: To account for potential stacking, Colby Law Firm multiplied the Maximum Penalties Without Stacking (\$2,336,700) times three, which is the number of Labor Code violations alleged in the Complaint for the PAGA claim, which amounts to **\$7,010,100** (“Maximum Penalties With Stacking”).

\$100 Penalty Only Without Stacking: To account for the realities that courts have discretion to award less than the maximum PAGA penalties under Labor Code section 2698 and the *Bernstein* decision providing for \$100 penalties only for all pay periods in certain circumstances, Colby Law Firm then calculated an alternative PAGA exposure by multiplying the initial \$100 penalty by all pay periods in the PAGA Period (\$100 x 11,893), which amounts to **\$1,189,300**.

\$100 Penalty Only With Stacking: Colby Law Firm then multiplied that number (\$1,189,300) by three, the number of Labor Code violations alleged in the Complaint for the PAGA claim, to account for stacking, which amounts to **\$3,567,900** (“\$100 Penalties With Stacking”).

Defendant cured its wage statement violation and claims any challenge to the cure would be made on a technicality that had no impact on the Aggrieved Employees. Based on Defendant’s cure efforts and the practical benefits realized by the Aggrieved Employees, there is a possibility that zero PAGA penalties would be awarded. Accordingly, ***PAGA penalty exposure ranged from \$0 (if no penalties were awarded) to millions of dollars based on full penalty awards and stacking***, which would be tenuous for Plaintiff to win given Defendant’s cure and the uncertainty caused by judicial discretion in awarding penalties and Defendant’s cure efforts.

The discounted settlement amount recognizes the above-described impediments to a substantial PAGA award under the circumstances, as illuminated during the Parties’ arm’s length negotiations, legal research, and mediator guidance in the full-day mediation that ultimately led to the settlement.

EXHIBIT H

DECLARATION OF ZOE YUZNA

I, Zoe Yuzna, hereby declare:

1. I am over 18 years of age. I am an attorney with Colby Law Firm, PC, counsel for Plaintiff Marielos Ascencio (“Plaintiff”) in the above-captioned lawsuit against Toshiba America Business Solutions, Inc. (“Defendant”). Plaintiff and Defendant are referenced collectively herein as the “Parties.”

2. The following facts are within my personal knowledge and knowledge obtained in my professional capacity in the ordinary course of business and, if called as a witness herein, I can and will competently testify thereto.

3. This declaration is prepared and submitted in response to the Court’s January 5, 2024 order requiring the Parties to supplement certain information in connection with their Joint Motion for Approval of PAGA Settlement – specifically, the part of the order requiring counsel to provide ***lodestar or litigation costs detail, including information regarding hours expended and hourly rates for each attorney who worked on litigation, as well as hours and rates for paralegal and other staff members.***

4. Aaron N. Colby and I are the two attorneys who worked on this case. Each of us bills at **\$750** per hour for our work. The hourly rate for our paralegals is **\$225**.

5. I have extensive wage and hour litigation experience, including my previous role as an attorney for the California Labor Commissioner, Division of Labor Standards Enforcement, where I was responsible for enforcing California wage and hour laws on behalf of workers. My colleague Aaron N. Colby, founding principal of Colby Law Firm, PC, also has substantial experience in handling wage and hour cases. Our practice is dedicated to plaintiff’s-side employment litigation, with the majority of our cases involving wage and hour claims. Together, we have handled more than 100 lawsuits involving wage-and-hour claims, including more than 50 Private Attorney’s General Act claims, and we have handled 13 class action cases through final approval. Additionally, when I was an attorney with the plaintiff’s-side employment law firm, Hadsell Stormer Renick and Dai LLP, I was a member of the team handling the appeal in the *Chinese Daily News* class action (*Wang v. Chinese Daily News* (C.D. Cal. 2005) 231 F.R.D. 602).

1 6. In this litigation, our office has undertaken extensive investigation, litigation, and
2 negotiation efforts. At the outset of our work on the litigation, we investigated hundreds of pages
3 of employment records and conducted hours of interviews. After drafting and filing the complaint,
4 we had to engage in extensive law and motion practice based on (i) Defendant's cure efforts with
5 the LWDA, and (ii) Defendant's efforts to compel arbitration of the PAGA claim in the midst of
6 evolving case law following the *Viking River* and *Adolph v. Uber* rulings¹, along with their progeny.
7 The parties exchanged extensive written discovery and engaged in hours of meet and confer efforts
8 to focus the litigation issues and explore potential resolution to benefit the aggrieved employees
9 with recognition of the litigation risks for each side, which included formal mediation. These
10 activities entailed over 180 hours of attorney time and over 20 hours of paralegal time, exceeding
11 **\$140,000 in attorney and paralegal billing at hourly rates.** Colby Law Firm incurred more than
12 **\$9,000** in litigation costs.

13 7. The estimated **\$40,000** sought for attorneys' fees and costs represents **less than 1/3**
14 **of the fees and costs incurred to date** (not accounting for the substantial further fees and costs that
15 would be incurred if the parties did not reach the proposed settlement).

16 I declare under penalty of perjury under the laws of the United States of America and the
17 State of California that the forgoing is true and correct.

18
19 Executed on February 26, 2024 in Los Angeles, California.

20
21 

22 _____
Zoe Yuzna

23
24
25
26
27 _____
28 ¹ *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906; *Adolph v. Uber Technologies, Inc.*
(2023) 14 Cal. 5th 1104.

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 February 26, 2024, I served the following document(s) on the following recipient(s) via electronic mail:

Document(s) Served

- **SUPPLEMENTAL DECLARATION OF ZOE YUZNA IN SUPPORT OF JOINT MOTION FOR APPROVAL OF PAGA SETTLEMENT**

Recipient(s)

- Carolyn E. Sieve (csieve@constangy.com)
- Matthew Scholl (mscholl@constangy.com)
- Julia Postolnaia (jpostolnaia@constangy.com)
- Katie Costantino (kcostantino@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 February 26, 2024 at Los Angeles, California.

Kaylee Alvarez

Print Name



Signature

PROOF OF SERVICE