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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO**

ADAN CARLOS, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

MARICH CONFECTIONERY COMPANY,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CU-21-00215

Assigned for All Purposes to:
Honorable J. Omar Rodriguez
Department 1

CLASS ACTION

**FURTHER AMENDED [PROPOSED]
ORDER OF FINAL APPROVAL AND
JUDGMENT**

Hearing Date: November 29, 2023
Hearing Time: 10:30 a.m.
Hearing Place: Department ~~2~~ 1

Complaint Filed: November 2, 2021
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Adan Carlos' ("Plaintiff")
2 Motion for Final Approval of Class Action Settlement, and considering the papers submitted in
3 support of the motion, including the Class Action and PAGA Settlement Agreement ("Settlement
4 Agreement," "Settlement," or "Agreement"), hereby **FINDS AND ORDERS**:

5 Plaintiff and Defendant Marich Confectionary Company, Inc. ("Defendant") entered the
6 Settlement Agreement on or about May 11, 2023 to settle this lawsuit.

7 The Court entered an order dated August 25, 2023 preliminarily approving the settlement
8 of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil Procedure
9 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
10 providing Class Members with an opportunity to object to the Settlement or exclude themselves
11 from the Class, and scheduling a Final Approval Hearing.

12 The Court held a Final Approval Hearing on November 29, 2023 to determine whether to
13 give final approval to the Settlement of this lawsuit.

14 1. Incorporation of Other Documents. This Further Amended Order of Final
15 Approval and Judgment ("Order and Judgment") incorporates the Settlement Agreement. Unless
16 otherwise provided herein, all capitalized terms in this Order and Judgment shall have the same
17 meaning as set forth in the Settlement Agreement.

18 2. Jurisdiction. Because adequate notice has been disseminated and the Class has
19 been given the opportunity to request exclusion, the Court has personal jurisdiction with respect
20 to the claims of all Class Members. The Court has subject matter jurisdiction over this lawsuit,
21 including jurisdiction to approve the Settlement and grants final certification of the Class.

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1 3. Final Class Certification. The Court finds the Class satisfies all applicable
2 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
3 process. The Court certifies the Class consisting of all current and former non-exempt employees
4 (directly hired only) of Defendant within the State of California at any time during the period
5 from May 6, 2017 to June 25, 2023 (“Class,” “Class Members,” and “Class Period”). There are
6 five hundred ninety-six (596) Class Member who did not submit valid and timely Requests for
7 Exclusion from the Settlement (“Participating Class Members”).¹

8 4. Adequacy of Representation. Class Counsel fully and adequately represented the
9 Class for the purposes of entering and implementing the Settlement and satisfied the
10 requirements of Code of Civil Procedure section 382.

11 5. Class Notice. The Court Approved Notice of Class Action Settlement and
12 Hearing Date for Final Court Approval (“Class Notice”) and its distribution to Class Members
13 were implemented pursuant to the Settlement and this Court’s Preliminary Approval Order. The
14 Court also finds the Class Notice:

- 15 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
16 pendency of this lawsuit; (ii) material terms and provisions of the Settlement
17 Agreement and their rights; (iii) their right to object to any aspect of the
18 Settlement Agreement; (iv) their right to exclude themselves from the Settlement
19 Agreement; (v) their right to receive settlement payments; (vi) their right to
20 appear at the Final Approval Hearing; and (vii) binding effect of the orders and
21 judgment in this lawsuit on all Participating Class Members;
- 22 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
23 section 382, California Rule of Court 3.769, and due process;
- 24 c. constitutes the best practicable notice to Class Members under the circumstances
25 of this lawsuit; and
- 26 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

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28 ¹ The Administrator mailed five hundred ninety-seven (597) Class Notices and received one
(1) request for exclusion. Therefore, there are five hundred ninety-six (596) Participating
Class Members.

1 6. Final Settlement Approval. The terms and provisions of the Settlement
2 Agreement have been entered into in good faith and are the product of arm's-length negotiations
3 by experienced counsel who have carried out a meaningful investigation of the claims. The
4 Settlement Agreement and all its terms and provisions are fully and finally approved as fair,
5 reasonable, adequate, and in the best interests of the Parties. The Parties are hereby directed to
6 implement the Settlement Agreement according to its terms and provisions.

7 7. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
8 any action to enforce the terms and provisions of the Settlement Agreement.

9 8. Binding Effect. The terms and provisions of the Settlement Agreement and this
10 Order and Judgment are binding on Plaintiff, Participating Class Members, Aggrieved
11 Employees, and their spouses, heirs, registered domestic partners, executors, administrators,
12 successors, and assigns. In addition, those terms shall have res judicata and other preclusive
13 effect in all pending and future claims, lawsuits, or other proceedings maintained by or on behalf
14 of any such persons to the extent those claims, lawsuits, or other proceedings involve matters
15 that were or could have been raised in this lawsuit and are encompassed by the Released Class
16 Claims and Released Private Attorneys General Act of 2004 ("PAGA") Claims. The Settlement
17 Agreement will have no binding effect upon, and provide no res judicata preclusion to, those
18 Class Members who have submitted timely requests for exclusion.

19 9. Release by Participating Class Members Who Are Not Aggrieved Employees.
20 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds
21 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
22 Participating Class Members, on behalf of themselves and their respective former and present
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the
24 Released Parties from the Released Class Claims.

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1 a. Release by Non-Participating Class Members Who Are Aggrieved Employees.

2 Effective on the date when Defendant fully funds the entire Gross Settlement
3 Amount and funds all employer payroll taxes owed on the Wage Portion of the
4 Individual Class Payments, all Non-Participating Class Members, who are
5 Aggrieved Employees, are deemed to release, on behalf of themselves and their
6 respective former and present representatives, agents, attorneys, heirs,
7 administrators, successors, and assigns, the Released Parties from the Released
8 PAGA Claims.

9 b. Plaintiff's Release. Effective on the date when Defendant fully funds the entire
10 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage
11 Portion of the Individual Class Payments, Plaintiff and his former and present
12 spouses, representatives, agents, attorneys, heirs, administrators, successors, and
13 assigns generally, release, and discharge Released Parties from Plaintiff's
14 Release. Plaintiff also expressly waives and relinquishes the provisions, rights,
15 and benefits, if any, of section 1542 of the Civil Code.

16 c. Released Parties. The Released Parties include Defendant and its parents,
17 predecessors, successors, all affiliates, subsidiaries, officers, directors, members,
18 agents, employees, and stockholders.

19 10. Class Representative Service Payment. The Court finds the Class Representative
20 Service Payment of \$10,000, to be paid by Defendant to Plaintiff out of the Gross Settlement
21 Amount, to be reasonable and appropriate. The Class Representative Service Payment is to be
22 paid pursuant to the terms and provisions set forth in the Agreement.

23 a. The rationale for making enhancement payments is class representatives should
24 be compensated for the expense and risk they incurred in conferring a benefit on
25 the Class. Criteria courts consider include: (1) risk to the class representatives in
26 commencing suit; (2) notoriety and personal difficulties; (3) amount of time and
27 effort spent by the class representatives; (4) duration of the litigation; and (5)
28 personal benefit (or lack thereof) enjoyed by class representatives.

1 b. The Court reviewed Plaintiff's declaration outlining his involvement. Given the
2 risks inherent in the services as the class representative, duration of the case and
3 time involved, and benefits created for the Class, the Court approves the payment
4 of the Class Representative Service Payment of \$10,000 to Plaintiff.

5 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.

6 The Court finds the Class Counsel Fees Payment of \$124,750, to be paid by Defendant to Class
7 Counsel out of the Gross Settlement Amount, to be reasonable and appropriate. In addition, the
8 Court finds the Class Counsel Litigation Expenses Payment as reimbursement for actual
9 litigation costs incurred of \$31,549.98, to be paid by Defendant to Class Counsel out of the
10 Gross Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid
11 pursuant to the terms and provisions set forth in the Settlement Agreement. Defendant shall not
12 be required to pay for any other attorneys' fees and expenses, costs, or disbursements incurred by
13 Class Counsel or any other counsel representing Plaintiff or Class Members. Defendant shall also
14 not be required to pay for any other attorneys' fees and expenses, costs, or disbursements
15 incurred by Plaintiff or Class Members in connection with or related in any manner to this
16 lawsuit, Settlement Agreement, settlement administration, and/or Released Class Claims and
17 Released PAGA Claims.

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- 1 a. The Court has an independent right and responsibility to review the Class Counsel
2 Fees Payment and only award so much as it determines reasonable. (See
3 *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123,
4 127-28.) The Class Counsel Fees Payment of \$124,750 is thirty-five percent
5 (35%) of the common fund created for the benefit of the Class and is supported by
6 use of the percentage-fee method.² (See *Laffitte v. Robert Half International, Inc.*
7 (2016) 1 Cal.5th 480, 504.) Considering the results achieved, financial risk
8 undertaken, novel and difficult nature of this litigation, skills required, percentage
9 fees award in previous and other cases, and contingent fees charged in the
10 marketplace, the Court finds the Class Counsel Fees Payment is consistent with
11 the marketplace, is reasonable, and is approved.
- 12 b. The Court reviewed the declaration of Douglas Han regarding the costs expended
13 in prosecuting this case. Under the terms of the Settlement, Class Counsel may
14 seek reimbursement of up to \$25,000 in litigation costs. The Court finds Class
15 Counsel expended \$31,549.98 in litigation costs, and such costs were reasonable.
16 Thus, the Court approves the payment of the Class Counsel Litigation Expenses
17 Payment of \$31,549.98 from the common fund for the reimbursement of Class
18 Counsel's litigation costs.³

19 12. Administration Expenses Payment. The Court finds Administration Expenses
20 Payment of \$11,500, to be paid by Defendant to the Administrator out of the Gross Settlement
21 Amount, to be reasonable and appropriate. The Administration Expenses Payment are to be paid
22 pursuant to terms and provisions set forth in the Settlement Agreement.

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25 ² The Escalator Clause set forth in Section H of the Settlement Agreement was triggered,
26 thereby raising the Gross Settlement Amount to \$356,428.57. Since the Class Counsel Fees
27 Payment is thirty-five percent (35%) of the Gross Settlement Amount, the Class Counsel
Fees Payment also increased to \$124,750.

28 ³ When drafting and finalizing the Settlement Agreement, Class Counsel underestimated
the costs and expenses incurred throughout the litigation of this matter. So, Class Counsel is
asking the Court to approve a Class Counsel Litigation Expenses Payment of \$31,549.98.

1 a. The Court reviewed the declaration of Yami Burns from Phoenix Class Action
2 Administration Solutions, the Court-approved Administrator. The Court finds
3 notice was provided to the Class pursuant to the Preliminary Approval Order,
4 constitutes the best practicable notice to the Class, and satisfied due process.
5 Thus, the Court approves the payment of the Administration Expenses Payment of
6 \$11,500 for the Administrator's services in administering the Settlement.

7 13. PAGA Penalties. The Court finds the PAGA Penalties of \$10,000, seventy-five
8 percent (75%) of which (\$7,500) will be paid to the LWDA out of the Gross Settlement Amount
9 and twenty-five percent (25%) of which (\$2,500) shall be distributed to Aggrieved Employees,
10 on a pro rata basis, to be reasonable and appropriate. The PAGA Penalties is to be paid pursuant
11 to the terms and provisions set forth in the Settlement Agreement.

12 14. Funding the Settlement. Defendant shall fund the Gross Settlement Amount by
13 transmitting the funds to the Administrator by the Effective Date or January 31, 2024, whichever
14 is later. Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement
15 Amount, the Administrator will mail checks for all settlement payments.

16 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
17 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contends the
18 Settlement was the product of arm's-length negotiations following extensive litigation,
19 discovery, and exchange of documentation. The negotiations were facilitated with the aid of Paul
20 Grossman, an experienced and well-respected mediator.

21 a. The fairness of the Settlement is demonstrated by there being no objections to and
22 only (1) request for exclusion from the Settlement.

23 16. Uncashed Checks. Participating Class Members and Aggrieved Employees must
24 cash or deposit their settlement checks within one hundred eighty (180) calendar days after the
25 checks are mailed to them. Uncashed settlement checks will be paid to the *cy pres* recipient San
26 Benito County Youth Alliance.

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1 17. Modification of Settlement Agreement. The Participating Class Members are
2 hereby authorized, upon approval of the Court, to agree to and adopt amendments to or
3 modifications of the Settlement Agreement by an express written instrument signed by all Parties
4 or their representatives and approved by the Court. Such amendments or modifications shall be
5 consistent with this Order and Judgment and cannot limit the rights of Participating Class
6 Members under the Settlement Agreement.

7 18. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
8 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
9 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
10 and for any other necessary purpose, including, without limitation:

- 11 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
12 claims, or causes of action in this lawsuit that, in whole or in part, are related to or
13 arise out of the Settlement or this Order and Judgment;
- 14 b. entering such additional orders as may be necessary or appropriate to protect or
15 effectuate this Order and Judgment approving the Settlement, and permanently
16 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure the
17 fair and orderly administration of the Settlement; and
- 18 c. entering any other necessary or appropriate orders to protect and effectuate this
19 Court's retention of continuing jurisdiction.

20 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
21 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
22 GRANTED. The Administrator is directed to carry out the terms of the Settlement Agreement
23 forthwith.

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1 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
2 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
3 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
4 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
5 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
6 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
7 THE JUDGMENT THEREON.

8 IT IS SO ORDERED.

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10 DATED: July 2, 2024



HONORABLE THOMAS P. BREEN
SUPERIOR COURT JUDGE

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On January 4, 2024, I served the foregoing document described as

PROOF OF SERVICE