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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

JUDIT LLAMAS, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other non-party Aggrieved Employees,

Plaintiff,

vs.

EASTBAY EQUITIES, INC., an Ohio
corporation; EASTBAY EQUITIES
MANAGEMENT, LLC, an Ohio limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No. RG20081536

PAGA SETTLEMENT AGREEMENT

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Alameda (“Court”), Plaintiffs Judit Llamas and Cecelia Aranda (“Plaintiffs”) and Defendants Eastbay Equities, Inc. and Eastbay Equities Mgt., LLC (“Defendants”) (collectively with Plaintiffs, the “Parties”) hereby agree to the following binding settlement (“Settlement” or “Settlement Agreement”) of the action entitled *Llamas et al. v. Eastbay Equities, Inc. et al.*, No. 21STCV21653 (Alameda County Superior Court) (the “Action”).

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. “Aggrieved Employees” means all current and former employees who worked for Defendants in the State of California as non-exempt, hourly paid employees and received at least one wage statement during the period September 17, 2019 through the earlier of May 3, 2022 or the date of approval of this Settlement.
2. “Court” means the Superior Court for the State of California, County of Alameda.
3. “LWDA” means the California Labor and Workforce Development Agency.
4. “Gross Settlement Amount” means the Gross Settlement Amount of Five Hundred Seventy Thousand Dollars (\$570,000) to be paid by Defendants in full satisfaction of all Settled Claims arising from the Action, which includes all payments to Aggrieved Employees, Plaintiffs’ Counsel, the LWDA, and the Settlement Administrator.
5. “PAGA” means the California Private Attorneys General Act, California Labor Code § 2698, as amended.
6. “PAGA Penalties Fund” means the Gross Settlement Amount less the Attorneys’ Fees and Costs, and Settlement Administration Costs.
7. “PAGA Settled Claims” means any and all claims for civil penalties under the PAGA, based on the claims alleged or that could reasonably have been alleged to have been violated in the Action and the Plaintiffs’ PAGA letters submitted to the LWDA on behalf of Plaintiffs and the Aggrieved Employees, including but not limited to any alleged violations of Labor Code §§ 201, 202,

203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802 and 2810.5, the Wage Orders, regulations, and/or other provisions of law, based on the facts alleged in the Action and LWDA letters during the Settlement Period, including but not limited to, alleged failure to pay all wages owed for all hours worked (including both minimum wages and overtime), failure to provide meal periods, failure to provide rest periods, failure to provide accurate and complete wage statements, failure to pay reporting time pay, failure to timely pay all wages owed during employment, failure to timely pay all wages due upon separation, failure to maintain records, failure to provide expense reimbursement, failure to provide required notices under the Wage Theft Protection Act, failure to comply with Labor Code §206.5 for requiring a release of claims as a condition for the payment of wages and failure to provide suitable seating.

8. “Plaintiffs’ Counsel” means Capstone Law APC.

9. “Released Parties” means Defendants and their former and present parents, subsidiaries, franchisors, franchises and affiliated corporations and its/their respective officers, directors, employees, managers, partners, shareholders, agents, insurers, and any other successors, assigns, or legal representatives.

10. “Service Awards” means the amounts to be paid to Plaintiffs as payment for their service on behalf of the LWDA and Aggrieved Employees, and for general releases of all claims arising out of their employment with Defendants. The Service Awards will be paid separately from, and in addition to, the Gross Settlement Amount.

11. “Settlement Period” means September 17, 2019 through the earlier of May 3, 2022 or the date of approval of this Settlement.

TERMS

12. Gross Settlement Amount. In consideration for Plaintiffs’ promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendants will pay Five Hundred Seventy Thousand Dollars (\$570,000) (“Gross Settlement Amount”), to settle the Action. The Gross Settlement Amount includes attorneys’ fees, litigation costs and expenses, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share

1 of the PAGA Penalties Fund. No portion of the Gross Settlement Amount will be retained by, or revert
2 to, Defendants.

3 13. PAGA Penalties Fund. The PAGA Penalties Fund will be paid to Aggrieved Employees
4 and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor
5 Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the
6 Action with respect to Aggrieved Employees. Pursuant to PAGA, Seventy-Five Percent (75%) of the
7 PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be
8 paid to all Aggrieved Employees according to the following formula:

9 13(a) Defendants will calculate: (i) the total number of pay periods worked by
10 each Aggrieved Employee during the Settlement Period, and (ii) the total
11 number of pay periods worked by all Aggrieved Employees during the
12 Settlement Period.

13 13(b) To determine each Aggrieved Employee's payment from the PAGA
14 Penalties Fund, Defendants will use the following formula: Settlement
15 Payment = 25% of PAGA Penalties Fund $\times$ [Pay Periods Worked by
16 Individual Aggrieved Employee During the Settlement Period $\div$ Total Pay
17 Periods Worked by All Aggrieved Employees during the Settlement
18 Period].

19 13(c) To date, Defendants estimate that Aggrieved Employees worked during a
20 total of approximately Forty-Two Thousand (42,000) Pay Periods.

21 14. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or
22 motion by Plaintiffs' Counsel for Attorneys' Fees and Costs of not more than One Hundred Ninety
23 Thousand Dollars (\$190,000), plus the reimbursement of all out-of-pocket costs and expenses associated
24 with Plaintiffs' Counsel's litigation and settlement of the Action (including expert/consultant fees,
25 investigations costs, etc.), not to exceed Twenty Thousand Dollars (\$20,000), both of which will be paid
26 from the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to
27 Plaintiffs' Counsel will be added to the PAGA Penalties Fund.
28

1 15. Service Awards. For general releases of all claims Plaintiffs may have against
2 Defendants arising out of their employment, and for their service on behalf of the LWDA and Aggrieved
3 Employees, Defendants agree not to oppose or impede any application or motion by Plaintiffs for a
4 service award of up to Ten Thousand Dollars (\$10,000), each (“Service Awards”). The entire amount of
5 the Service Awards shall be considered penalties and the settlement administrator will not deduct local,
6 state or federal tax withholdings.

7 16. Settlement Administration Costs. The Parties will retain ILYM Group, Inc. as the third-
8 party settlement administrator (“Settlement Administrator”). The Settlement Administrator will be
9 responsible for establishing a qualified settlement fund (“QSF”) and issuing payments and appropriate
10 tax forms to Aggrieved Employees, the LWDA, Plaintiffs, and Plaintiffs’ Counsel. The Settlement
11 Administration Costs will be paid from the Gross Settlement Amount. Based on the estimate that there
12 are approximately Two Thousand (2,000) Aggrieved Employees, settlement administration costs
13 (“Settlement Administration Costs”) are estimated at Eight Thousand Dollars (\$8,000).

14 17. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties
15 will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the
16 Court issue an order and judgment approving and incorporating by reference the terms and conditions of
17 the Settlement Agreement (the “Order and Judgment”).

18 18. List of Aggrieved Employees. Within fourteen (14) calendar days after entry of the
19 Order and Judgment, Defendants will provide the Settlement Administrator a complete list of all
20 Aggrieved Employees (“Aggrieved Employee List”). The Aggrieved Employee List will be formatted in
21 Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing
22 address and telephone number; Social Security number; the respective number of pay periods during
23 which each Aggrieved Employee worked during the Settlement Period; and any other relevant
24 information needed to calculate settlement payments.

25 19. Funding of the Settlement. Within fourteen (14) calendar days after entry of the Order
26 and Judgment, Defendant will deposit the Gross Settlement Amount and Court-approved Service
27 Awards into a Qualified Settlement Fund (“QSF”) to be established by the Settlement Administrator.
28 Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will

1 issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c)
2 Plaintiffs; (d) Plaintiffs' Counsel; and (e) itself. The Settlement Administrator, and not Defendants, will
3 issue the appropriate tax forms for all payments issued under this Settlement.

4 20. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue
5 each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an
6 explanatory letter, attached as Exhibit A. Prior to mailing, the Settlement Administrator will perform a
7 search based on the National Change of Address Database for information to update and correct for any
8 known or identifiable address changes. Any checks returned as non-deliverable on or before the check
9 cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address
10 affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt
11 to determine the correct address using a skip-trace, or other search using the name, address or Social
12 Security number of the Aggrieved Employee involved, and will then perform a single re-mailing.
13 Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain
14 outstanding 180 days after the mailing of the Settlement checks by the Settlement Administrator will be
15 tendered to the LWDA. All settlement payments to Aggrieved Employees will be treated as
16 miscellaneous income for which a 1099 will be issued by the Settlement Administrator.

17 21. Settled Claims. Upon entry of the Order and Judgment approving payments as described
18 in this Agreement, Plaintiffs, the Aggrieved Employees and the State of California shall be bound by this
19 Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder.
20 Plaintiffs, the Aggrieved Employees and the State of California shall be deemed to have, and by
21 operation of the Order granting approval of the payments as described in this Agreement, fully, finally,
22 and forever released, relinquished, and discharged each and all of the Released Parties from the PAGA
23 Settled Claims that arose during the Settlement Period. Plaintiffs and all Aggrieved Employees will be
24 forever barred from pursuing against the Released Parties any and all PAGA Settled Claims during the
25 Settlement Period. Aggrieved Employees, other than Plaintiffs, will not be deemed to have released any
26 individual wage and hour claims by virtue of this Settlement.

27 22. General Release of Claims. Upon receipt of the Service Awards, Plaintiffs will be
28 deemed to have fully released and discharged Released Parties from any and all claims, demands,

obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising out of, or relating to, Plaintiffs' employment with Defendants or termination thereof, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. This release specifically includes any and all claims, demands, obligations and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs (except provided by the Settlement) relating to or in any way connected with the matters referred to herein, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Specifically, Plaintiffs will be deemed to have waived all rights and benefits afforded by California Civil Code Section 1542, which provides:

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

23. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private Attorneys General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

24. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

1 25. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
2 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
3 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
4 action or right herein released and discharged.

5 26. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
6 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
7 this Settlement Agreement, and any documents generated to bring it into effect, will be null and void,
8 and the Parties will be returned to their original respective positions.

9 27. Judgment and Continued Jurisdiction. After entry of the Order and Judgment, the Court
10 will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
11 of the terms of the Settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters
12 as may be appropriate under court rules or as set forth in this Settlement.

13 28. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
14 settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding
15 on the Parties.

16 29. Amendment or Modification. This Settlement Agreement may be amended or modified
17 only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all
18 Parties.

19 30. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
20 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
21 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
22 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
23 effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each
24 other and use their best efforts to affect the implementation of the Settlement. If the Parties are unable to
25 reach agreement on the form or content of any document needed to implement the Settlement, or on any
26 supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties
27 may seek the assistance of the Court to resolve such disagreement.

28 31. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,

1 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

2 32. California Law Governs. All terms of this Settlement Agreement will be governed by
3 and interpreted according to the laws of the State of California.

4 33. Execution and Counterparts. This Settlement Agreement is subject only to the execution
5 of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All
6 executed counterparts and each of them, including electronic signatures (e.g., DocuSign), facsimiles, and
7 scanned copies of the signature pages, will be deemed to be one and the same instrument.

8 34. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
9 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this
10 Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that
11 they are each represented by competent counsel and that they have had an opportunity to consult with
12 their counsel regarding the fairness and reasonableness of this Settlement.

13 35. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that
14 Plaintiffs may appeal any reduction to the Attorneys' Fees and Costs below the amount they request
15 from the Court, and either party may appeal any court order that materially alters the Settlement's terms.

16 36. Invalidity of Any Provision. Before declaring any provision of this Settlement
17 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
18 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
19 valid and enforceable.

20 37. Captions. The captions and section numbers in this Settlement Agreement are inserted
21 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
22 provisions of this Settlement Agreement.

23 38. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
24 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
25 constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

26 39. Enforcement Action. In the event that one or more of the Parties institutes any legal
27 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
28 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be

entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

40. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

41. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

42. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

43. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

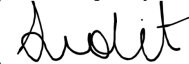
44. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its

purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

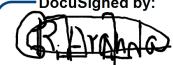
Dated: 5/24/2022

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Judit Llamas

PLAINTIFF

Dated: 5/24/2022

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6D09C6C029280430...

Cecelia Aranda

DEFENDANTS

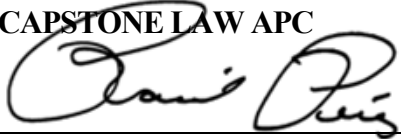
Dated: _____

Name of Authorized Signatory
Eastbay Equities, Inc. and Eastbay Equities Mgt.,
LLC

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: 5/24/2022



Raul Perez
Attorneys for Plaintiffs Judit Llamas and Cecelia
Aranda

LITTLER MENDELSON P.C.

Dated: _____

JoAnna L. Brooks
Attorneys for Defendants Eastbay Equities, Inc. and
Eastbay Equities Mgt., LLC

purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Dated: _____

Judit Llamas

PLAINTIFF

Dated: _____

Cecelia Aranda

DEFENDANTS

6/13/2022
Dated: _____

William G. Cast
Name of Authorized Signatory
Eastbay Equities, Inc. and Eastbay Equities Mgt.,
LLC

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: _____

Raul Perez
Attorneys for Plaintiffs Judit Llamas and Cecelia
Aranda

LITTLER MENDELSON P.C.

Dated: June 13, 2022 _____

JoAnna L. Brooks
JoAnna L. Brooks
Attorneys for Defendants Eastbay Equities, Inc. and
Eastbay Equities Mgt., LLC

Exhibit 1

<<DATE>>

<<FIRST_NAME>> <<LAST_NAME>>

<<ADDRESS 1>>

<<ADDRESS 2>>

Re: Payment From *Llamas v. Eastbay Equities, Inc.*, No. RG20081536 (Alameda County Superior Court)

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 *Judit Llamas et al. v. Eastbay Equities, Inc. et al.*, No. 21STCV21653 (Alameda County Superior Court) (the “Action”).

The Action was filed by Plaintiffs Judit Llamas and Cecelia Aranda against Defendants Eastbay Equities, Inc. and Eastbay Equities Mgt., LLC (“Defendants”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (called “PAGA”). The Action was brought by former employees of Defendants on behalf of the State of California and all allegedly “aggrieved employees” of Defendants who worked as non-exempt employees from the time period September 17, 2019 through [ENTER DATE] (the earlier of May 3, 2022 or the date of approval of this Settlement). You have been identified as one of the employees on whose behalf the case was brought.

The Plaintiffs in the Action claimed that Defendants owed civil penalties recoverable under PAGA for alleged violations of the California Labor Code §§ 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802 and 2810.5 and California Wage Orders based on the facts alleged in the Action for alleged failure to pay all wages owed for all hours worked (including both minimum wages and overtime), failure to provide meal periods, failure to provide rest periods, failure to provide accurate and complete wage statements, failure to pay reporting time pay, failure to timely pay all wages owed during employment, failure to timely pay all wages due upon separation, failure to maintain records, failure to provide expense reimbursement, failure to provide required notices under the Wage Theft Protection Act, failure to comply with Labor Code §206.5 for requiring a release of claims as a condition for the payment of wages and failure to provide suitable seating. Defendants deny that they violated the Labor Code or California Wage Orders in any manner whatsoever. Moreover, in agreeing to this settlement, Defendants do not admit that they are liable in any way for any penalties.

The Court has not ruled on the merits of the Action but it has approved the settlement of PAGA civil penalties, of which 75% will be paid to the California Labor and Workforce Development Agency, and the remaining 25% will be paid to aggrieved employees. Pursuant to the settlement, enclosed is a check for your share of a portion of the PAGA civil penalties.

Aggrieved employees, other than Plaintiffs, will not be deemed to have released any individual wage and hour claims based on alleged violations of the Labor Code or of a California Wage Order, for which they have a private right of action, by virtue of the Settlement. Any PAGA claims based on the

facts alleged in the Action, however, shall be considered waived and released for the time period September 17, 2019 through [ENTER DATE] (the earlier of May 3, 2022 or the date of approval of this Settlement).

You are not a party to this lawsuit, but you and the government will be bound by the settlement in this matter as to PAGA civil penalties. If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter).

Very Truly Yours,

[Administrator]