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

JOHN SURBY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

ARB, Inc., a California Corporation,

Defendant.

CASE NO: 30-2021-01194784-CU-OE-CXC

**ORDER APPROVING PAGA
SETTLEMENT AND ENTERING
JUDGMENT**

Complaint Filed: April 9, 2021
First Amended Complaint Filed: June 28, 2021

1 Plaintiff John Surby moved for approval of the proposed settlement of Plaintiff's claims for
2 civil penalties under the California Private Attorneys General Act ("PAGA"), pursuant to California
3 Labor Code section 2699, subdivision (l)(2). That motion was not opposed by Defendant ARB, Inc.,
4 ("ARB"). The parties seek approval of the settlement, including the Gross Settlement Amount
5 ("GSA") of \$90,000.00. A PAGA Penalty Fund of \$39,597.24 shall be paid from the \$90,000.00
6 GSA after deductions for (1) Plaintiff's Service Award (\$5,000.00); Plaintiff's Counsel's attorneys'
7 fees (\$30,000.00); (3) Plaintiff's Counsel's actual litigation costs incurred (\$12,002.76); and (4)
8 costs of settlement administration (\$3,400.00). Pursuant to Labor Code section 2699, subdivision
9 (l)(2), the Labor and Workforce Development Agency ("LWDA") was provided with notice of the
10 settlement and the motion via its online process and no objection has been received to the settlement
11 or the motion. The capitalized terms herein have the same meaning as in the PAGA Settlement
12 Agreement and Amendment to the PAGA Settlement Agreement.

13 Good cause appearing based on the reasons set forth in the joint motion for approval, the
14 Court hereby GRANTS the motion and approves the PAGA settlement as set forth in the PAGA
15 Settlement Agreement and Amendment to the PAGA Settlement Agreement and the PAGA Penalty
16 Fund of \$39,597.24, which shall be allocated and paid out as set forth in the Settlement and in
17 accordance with Labor Code section 2699, subdivision (i). The Court has approved the PAGA
18 Settlement Agreement and Amendment to the PAGA Settlement Agreement as fair, reasonable and
19 adequate. The PAGA Settlement Agreement is attached hereto as **Exhibit A**. The Amendment to
20 the PAGA Settlement Agreement (signed by the Parties) is attached hereto as **Exhibit C**. The Notice
21 of Settlement to be sent to Aggrieved Employees is attached hereto as **Exhibit B**.

22 In addition to Plaintiff and the State of California, the individuals bound by this Judgment
23 are each non-exempt hourly-paid individual who is or was a California resident for state tax
24 purposes, who is or was employed by ARB, Inc. in the State of California, who is or was not part of
25 any bargaining unit represented by a union, and who worked one or more shifts from January 19,
26 2020, through the date the Court approves the settlement (collectively, the "PAGA
27 Members"). According to ARB, Inc., there are approximately one hundred sixty-two (162)
28 PAGA Members, including Plaintiff.

1 “Released Claims” and “Released Parties” have the meanings set forth in the Settlement
2 Agreement and Amendment to the Settlement Agreement.

3 The Parties and the Settlement Administrator are ordered to take all actions and administer the
4 settlement as required by the Settlement Agreement and Amendment to the Settlement Agreement.

5 The Court approves Atticus Administration, LLC as the Settlement Administrator and orders
6 the Settlement Administrator to make the disbursements in accordance with the terms of the PAGA
7 Settlement Agreement and Amendment to the PAGA Settlement Agreement.

8 The Court sets a hearing date for the Final Accounting Hearing of February 20, 2025 at 9:00
9 a.m. in Department CX104. Plaintiff’s Counsel shall submit a final administrator’s report at least
10 9 court days before the Final Accounting Hearing addressing the status of settlement
11 administration, including the actual amounts paid to the Aggrieved Employees and the other
12 amounts distributed under the settlement, including any uncashed checks.

13 Pursuant to Code of Civil Procedure section 664.6, the Court shall retain
14 jurisdiction over this action and the Parties, including after entry of this Judgment, to the fullest
15 extent necessary to interpret, enforce and effectuate the terms and intent of the Settlement
16 Agreement.

17 Pursuant to Labor Code section 2699, subdivision(l)(3), Plaintiff shall submit a copy of this
18 Judgment to the LWDA within 10 days after entry of the Judgment.

19 IT IS SO ORDERED, ADJUDGED AND DECREED.

20
21 DATED: September 12, 2024



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23 _____
24 THE HON. MELISSA R. McCORMICK
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EXHIBIT A

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff John Surby (“Plaintiff”) and Defendant ARB, Inc. (“ARB” or “Defendant”). The Agreement refers to Plaintiff and ARB collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against ARB captioned John Surby v. ARB, Inc. initiated on April 9, 2021 and pending in Superior Court of the State of California, County of Orange.
- 1.2. “Administrator” means Atticus Administration, LLC, 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 Employee” means *each non-exempt hourly-paid individual who is or was a California resident for state tax purposes, who is or was employed by ARB in the State of California, who is or was not part of any bargaining unit represented by a union, and who worked one or more shifts during the PAGA Period.*
- 1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in ARB’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and start and end dates of employment 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 James P. Carter, Esq. and Vincent L. Chen, Esq. of Jackson Lewis P.C.
- 1.9. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters its Order Approving the PAGA Settlement and (b) the Order is final. The Order is final as of the latest of the following occurrences: (a) the Court enters a Judgment only indicating its Order Approving and the period for filing any appeal, writ,

or other appellate proceeding to oppose the Court's Order Approving the PAGA Settlement has elapsed without any appeal, writ, or other appellate proceeding has been filed; or (b) the day after an appeal, writ of other appellate proceeding of the Court's Order Approving the PAGA Settlement is dismissed or withdrawn, or the appeal is decided and the propriety of the settlement is upheld.

- 1.10. "Gross Settlement Amount" or "GSA" means \$90,000.00, which is the total amount ARB agrees to pay under the Settlement, subject to the provisions of Paragraph 8 below. 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 Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the Net Settlement Amount, calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.13. "LWDA PAGA Payment" means 75% of the PAGA Penalties to be paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.14. "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. This amount shall be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.15. "PAGA Counsel" means Craig J. Ackermann and Avi Kreitenberg of Ackermann & Tilajef, P.C. and Amir Seyedfarshi from Employment Rights Law Group, APC, the attorneys representing the Plaintiff in the Action.
- 1.16. "PAGA Counsel Fees Payment" is one-third of the GSA, which amount is allocated to PAGA Counsel for reasonable attorneys' fees incurred to prosecute the Action.
- 1.17. "PAGA Counsel Litigation Expenses Payment" mean the amount allocated to PAGA Counsel for reimbursement of reasonable expenses incurred to prosecute the Action, which amount shall not exceed \$15,000. PAGA Counsel estimates the PAGA Counsel Litigation Expenses Payment to be in the amount of \$12,547.69 as of August 29, 2023.
- 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for ARB for at least one day during the PAGA Period.

- 1.19. “PAGA Period” means the period from January 19, 2020 through the date the Court approves the PAGA settlement.
- 1.20. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. Et seq.).
- 1.21. “PAGA Notices” means Plaintiff’s January 19, 2020 (“PAGA Notice”) and October 12, 2021 (“Amended PAGA Notice”) letters to ARB and the LWDA 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 75% to LWDA in settlement of PAGA claims. Subject to Court approval of the PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment, as described above, the portion of PAGA Penalties paid to the LWDA will be in the amount of \$27,414.23, and the portion allocated to the Aggrieve Employees will be in the amount of \$9,138.08.
- 1.23. “Plaintiff” and “PAGA Representative” means John Surby, 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 the Aggrieved Employees, as described in Paragraph 5 below.
- 1.26. “Released Parties” means: ARB, Inc. and each of its past, present and future parent and affiliated companies and joint ventures, and all of their respective shareholders, members, managers, officers, officials, directors, employees, agents, servants, registered representatives, attorneys, insurers, successors, and assigns, and any other persons acting by, through, under, or in concert with any of them.
- 1.27. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. “Defendant” means named Defendant ARB, Inc.

2. RECITALS.

- 2.1. On April 9, 2021, Plaintiff commenced this Action by filing a class and PAGA representative action complaint alleging causes of action against ARB for violations of Labor Code sections 201, 202, 203, 204, 226, 510, 1194, and 1194.2, which include claims for unpaid wages, unpaid reporting time, waiting time penalties, and wage statement penalties. On June 28, 2021, Plaintiff filed a First Amended Complaint dismissing the class claims and alleging a single cause of action for PAGA penalties. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint.”). ARB denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in 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 ARB and the LWDA by sending the PAGA Notices.
- 2.3. On June 21, 2023, after an exchange of informal discovery, the Parties participated in an all-day mediation with wage and hour mediator Mike D. Young, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery, the relevant data, including the total number of the Aggrieved Employees during the PAGA Period, the total number of pay periods during the PAGA Period, and a sample of Defendant’s payroll records. Plaintiff’s counsel has also disseminated a Belaire West notice and obtained the Aggrieved Employees’ contact details.
- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, ARB promises to pay \$90,000.00 and no more as the Gross Settlement Amount. ARB 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 ARB.
- 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 specified by the Court in the Final Approval:
 - 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than one-third

of the GSA, which is currently estimated to be \$30,000.00, and PAGA Counsel Litigation Expenses Payment of \$12,547.69. ARB 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 PAGA Counsel Fees Payment and 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 remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion of any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. 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 Released Parties harmless, and indemnifies Released Parties, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.2. To the PAGA Representative: The PAGA Representative, John Surby, will receive the amount of \$7,500.00 from the Gross Settlement amount for bringing forward this matter.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$3,400 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 \$3,400, the Administrator will allocate the remainder to the Net Settlement Amount .

3.2.4. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$36,552.31 to be paid from the Gross Settlement Amount, with 75% (\$27,414.23) allocated to the LWDA PAGA Payment and 25% (\$9,138.08) allocated to the Individual PAGA Payments.

3.2.4.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$9,138.08) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Aggrieved Employee Pay Periods. Based on a review of its records to date, ARB estimates there are 162 Aggrieved Employees who worked a total 14,000 pay periods during the PAGA Period.

- 4.2. Aggrieved Employee Data. Within 30 days of the date of Court approval of the PAGA Settlement, ARB will simultaneously 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. ARB has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. 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. ARB shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date, provided that the Administrator has, within a reasonable amount of time, delivered to the Parties an accounting of the amounts to be paid by ARB pursuant to the terms of this Settlement and directions for funding the Gross Settlement Amount.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after ARB funds the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Litigation Expenses Payment, and the PAGA Counsel Fees Payment. Disbursement of the PAGA Counsel Fees Payment and 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 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 ARB 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 ARB fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:
- 5.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the PAGA Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint, the Action, and the PAGA Notices ("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, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. 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, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims whether suspected or unsuspected, contingent or accrued, known or unknown, that have been pled or could have been pled under state, federal or local law, whether statutory, common law or administrative, arising out of or related to allegations set forth in Plaintiff's PAGA Notices, the Action, and Plaintiff's Complaint and First Amended

Complaint, and arising during the PAGA Period. These include claims for civil penalties under PAGA for Defendant's alleged failure to pay all earned wages, failure to pay minimum wages, failure to pay overtime compensation, failure to pay reporting time wages, failure to timely pay wages pursuant to Labor Code section 204, failure to pay all wages upon separation from employment, failure to provide adequate itemized wage statements, failure to maintain payroll records pursuant to Labor Code section 1174, interest, fees, including fees under California Code of Civil Procedure section 1021.5, costs, and all other claims and allegations for civil penalties under PAGA made or which could have been made in the Action based on the facts and allegations pled in the PAGA Notices, Plaintiff's Complaint, and the Operative Complaint.

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 draft proposed Notice to Aggrieved Employees; (iii) 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; (iv) a signed declaration from PAGA Counsel attesting to the 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)); (v) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vi) 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 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. PAGA Counsel is responsible for delivering the Court's Approval to the Administrator.

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 on

behalf of the Parties by meeting in person or by telephone, and 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 on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Atticus Administration, LLC to serve as the Administrator and verified that, as a condition of appointment, Atticus Administration, LLC 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 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 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE.

Based on its records, ARB, Inc. estimates that, as of the date of this Settlement Agreement, (1) there are 162 Aggrieved Employees who worked 14,000 Pay Periods during the PAGA Period. The settlement was entered based on Defendant's representation that there are 14,000 pay periods during the PAGA Period. If the total number of pay periods conveyed to the Settlement Administrator during the PAGA Period is 12% more than the amount stated, Defendant will have the option to increase the GSA proportionally for any pay periods above 15,680. If Defendant elects not to increase the GSA, the PAGA Period will run through the date the total pay periods reach 15,680.

9. CONTINUING JURISDICTION OF THE COURT. The Parties agree that the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or the Court's Order Approving the Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Order matters as are permitted by law.

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 ARB that any of the allegations in the Operative Complaint have merit or that ARB has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ARB'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, ARB reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to contest ARB's defenses. The Settlement, this Agreement and 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, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ARB, 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 the Settlement 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 and 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, ARB, 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 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 ARB 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 ARB unless, prior to the Administrator's payment of all Settlement Funds, ARB 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:

Employment Rights Law Group
Amir Seyedfarshi
6380 Wilshire Blvd., Suite 1602
Los Angeles, CA 90048
424-777-0964

Ackermann & Tilajef
Craig Ackermann
315 S Beverly Drive, Suite 504
Beverly Hills, CA 90212
310-277-0614

To ARB, Inc.:

Jackson Lewis P.C.
James Carter
Vincent Chen
Jessica Ewert
200 Spectrum Center Drive
Irvine, CA 92618
949-885-1360

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.

John Surby	<u>John Surby</u>	For Plaintiff	<u>James P. Carter</u>	9/6/23	For ARB, Inc.
09 / 06 / 2023			<u>James P. Carter</u>		
		Counsel For Plaintiff	James P. Carter		Counsel For ARB,
			Sept. 6, 2023		
Inc.					
09 / 06 / 2023	<u>AA</u>				

EXHIBIT B

NOTICE OF SETTLEMENT

John Surby v. ARB, Inc.

Superior Court of the State of California, County of Orange Case No. 30-2021-01194784-CU-OE-CXC

ATTICUS ADMINISTRATION, LLC

P.O. Box _____

Telephone: _____

«Barcode» «BarcodeString»
SIMID «SIMID»
«FirstName» «LastName»
«Address1» «Address2»
«City» «State» «Zip»

You are receiving this notice and a check made payable to you as a result of a lawsuit brought on a representative basis under the California Private Attorneys General Act, Labor Code §§ 2698 *et seq.* (“PAGA”) by Plaintiff John Surby (“Plaintiff”) against Defendant ARB, Inc. (“Defendant”) (the “Action”). PAGA is a California statute that authorizes aggrieved employees to bring actions for civil penalties on behalf of themselves, other employees, and the State of California against their employers for Labor Code violations. Pursuant to the Labor Code, the civil penalties are allocated as follows: 75% to the State of California’s Labor & Workforce Development Agency and 25% to the Aggrieved Employees. The following table sets forth the allocation of the settlement:

Gross Settlement Amount (“GSA”)	\$90,000.00
Attorneys’ Fees (1/3 of the GSA)	\$30,000.00
Litigation Costs	\$12,002.76
Plaintiff’s Service Award	\$5,000.00
Settlement Administration Costs	\$3,400.00
Net Settlement Amount (“NSA”)	\$39,597.24
Amount to LWDA (75% of NSA)	\$29,697.93
Amount to Aggrieved Employees (25% of NSA)	\$9,899.31

Through the Action, Plaintiff sought to recover civil penalties for purported violations of the California Labor Code on behalf of individuals who worked for Defendant during the time period January 19, 2020 through the date the Court approves the PAGA settlement (the “PAGA Period”), who were classified by Defendant as “non-exempt” employees in California and not part of any bargaining units represented by a union (the “Aggrieved Employees”). You are not a party to the Action, but you and the government will be bound by the Court’s Order in this matter as to civil penalties. Specifically, Plaintiff alleged that Defendant owes civil penalties under PAGA for Defendant’s failure to pay minimum wages for travel time to worksites in Defendant’s vehicles and for reporting time, failure to pay overtime wages, failure to provide complete wage statements, failure to pay timely wages to employees based on the foregoing, and failure to pay all wages due to former employees based on the foregoing.

Defendant denies all claims and allegations in the Action, denies that it owes any penalties to Plaintiff and/or the Aggrieved Employees, and asserts that it has fully complied with all applicable Labor Codes and all other provisions of law noted below. Nevertheless, to avoid further costs and time in defending the Action, Defendant has settled the Action, and the Court has approved the settlement and release of the PAGA claims. Note that this settlement does not release any underlying Labor Code claims you have against Defendant, rather, this settlement only releases your claims for civil penalties under PAGA. Specifically, the settlement resolves any and all claims for civil penalties based on the facts alleged in the operative complaint and the notice letter(s) to the LWDA. These include claims for civil penalties under PAGA for Defendant’s alleged failure to pay all earned wages, failure to pay minimum wages, failure to pay overtime compensation, failure to pay reporting time wages, failure to timely pay wages pursuant to Labor Code section 204, failure to pay all wages upon separation from employment, failure to provide adequate itemized wage statements, failure to maintain payroll records pursuant to Labor Code section 1174, interest, fees, including fees under California Code of Civil Procedure section 1021.5, costs, and all other claims

and allegations for civil penalties under PAGA made or which could have been made in the Action based on the facts and allegations pled in Plaintiff's PAGA Notice, Plaintiff's Amended PAGA Notice, Plaintiff's Complaint, and the Operative Complaint. By Order dated [INSERT DATE], the Superior Court of California for the County of Orange approved the settlement of the Action and the above release of PAGA claims. You cannot opt out of the settlement. If you do not cash your checks by the check cashing deadline you will still be bound by the release contemplated by the settlement.

According to Defendant's records, you are among the Aggrieved Employees and are therefore entitled to a share of the PAGA settlement proceeds based upon the Court-approved allocation, which is based upon the pay periods you worked during the PAGA Period as a percentage of the pay periods worked during the PAGA Period by all Aggrieved Employees. Accordingly, you are receiving the enclosed settlement check in connection with the settlement of the PAGA claim for civil penalties, which shall remain valid for 180 days after mailing (the "Settlement Payment"). Checks remaining un-cashed for more than 180 days after issuance will become void and the funds will be paid to the California Labor & Workplace Development Agency.

Please Note: One hundred percent (100%) of your payment will be considered civil penalties; may be subject to local, state, and/or federal tax withholdings; and will be reported to the IRS and applicable state tax authorities on a 1099 basis. Note, no payroll deductions have been taken from your Settlement Payment. You should rely on your own tax advisors as to the tax consequences of your Settlement Payment. Neither Plaintiff nor Defendant has made or will make any representations or warranties regarding the taxation of your Settlement Payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or your Settlement Payment. If you have any questions, you may call or write to Atticus Administration, LLC (the Settlement Administrator) using the contact information at the top of this correspondence.

EXHIBIT C

AMENDMENT TO PAGA SETTLEMENT AGREEMENT

This Amendment (“Amendment”) to the PAGA Settlement Agreement (“Settlement Agreement”) is made and entered into by Plaintiff John Surby (“Plaintiff”) and Defendant ARB, Inc. (“Defendant”) pursuant to Paragraph 10.7 of the Settlement Agreement, which provides that: “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.”

This Amendment incorporates by reference all terms and conditions of the Settlement Agreement. But for those specific terms and conditions that this Amendment modifies, all Settlement terms and conditions will remain effective and enforceable. Any inconsistencies or differences between this Amendment and the Settlement will be interpreted and construed in favor of this Amendment.

1. Paragraph 5.2 is amended by deleting “all claims whether suspected or unsuspected, contingent or accrued, known or unknown, that have been pled or could have been pled under state, federal or local law, whether statutory, common law or administrative, arising out of or related to allegations set forth in Plaintiff’s PAGA Notices, the Action, and Plaintiff’s Complaint and First Amended Complaint, and arising during the PAGA Period,” and replaced with, “all claims for civil penalties based on the facts alleged in the operative complaint and the notice letter(s) to the LWDA.” (page 7).

IT IS SO STIPULATED

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date below their signatures or the signature of their representatives. The date of the Amendment shall be the date of the latest signature.

Date: _____

John Surby, Plaintiff

Date: _____



Craig J. Ackermann on behalf of Plaintiff

AMENDMENT TO PAGA SETTLEMENT AGREEMENT

This Amendment (“Amendment”) to the PAGA Settlement Agreement (“Settlement Agreement”) is made and entered into by Plaintiff John Surby (“Plaintiff”) and Defendant ARB, Inc. (“Defendant”) pursuant to Paragraph 10.7 of the Settlement Agreement, which provides that: “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.”

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IT IS SO STIPULATED

IN WITNESS WHEREOF, the Parties have executed this Amendment on the date below their signatures or the signature of their representatives. The date of the Amendment shall be the date of the latest signature.

08 / 29 / 2024
Date: _____

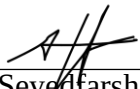
John Surby

John Surby, Plaintiff

Date: _____

Craig J. Ackermann on behalf of Plaintiff

Date: 9/10/2024



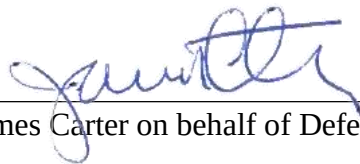
Amir Seyedfarshi on behalf of Plaintiff

Date: 9/10/24



ARB, Inc., Defendant

Date: 9/10.24



James Carter on behalf of Defendant